

Message

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**From:** Fogarty, Johnpc [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]  
**Sent:** 4/29/2019 11:29:04 AM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]  
**CC:** Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]  
**Subject:** Re: Follow-up Items to OCE Weekly 4-25-19

Yes - came in late Friday. Caroline is reviewing this AM and is also expecting additional material from Karen D.

Sent from my iPhone

On Apr 28, 2019, at 10:19 PM, Kelley, Rosemarie <Kelley.Rosemarie@epa.gov> wrote:

John--

Did you get anything from WED re: SEPs in muni cases?

Rosemarie

---

**From:** Fogarty, Johnpc  
**Sent:** Thursday, April 25, 2019 4:41 PM  
**To:** Bodine, Susan; Buterbaugh, Kristin; Sullivan, Greg; Saenz, Diana; Makepeace, Caroline  
**Cc:** Starfield, Lawrence; Traylor, Patrick; Shiffman, Cari; Branning, Hannah; Kelley, Rosemarie  
**Subject:** RE: Follow-up Items to OCE Weekly 4-25-19

## Ex. 5 AC/DP

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**From:** Bodine, Susan  
**Sent:** Thursday, April 25, 2019 4:40 PM  
**To:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Sullivan, Greg <Sullivan.Greg@epa.gov>; Saenz, Diana <Saenz.Diana@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Cc:** Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Branning, Hannah <Branning.Hannah@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** RE: Follow-up Items to OCE Weekly 4-25-19

## Ex. 5 AC/DP

---

**From:** Fogarty, Johnpc  
**Sent:** Thursday, April 25, 2019 4:38 PM  
**To:** Buterbaugh, Kristin <[Buterbaugh.Kristin@epa.gov](mailto:Buterbaugh.Kristin@epa.gov)>; Sullivan, Greg <[Sullivan.Greg@epa.gov](mailto:Sullivan.Greg@epa.gov)>; Saenz, Diana <[Saenz.Diana@epa.gov](mailto:Saenz.Diana@epa.gov)>; Makepeace, Caroline <[Makepeace.Caroline@epa.gov](mailto:Makepeace.Caroline@epa.gov)>  
**Cc:** Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>; Traylor, Patrick <[traylor.patrick@epa.gov](mailto:traylor.patrick@epa.gov)>; Shiffman, Cari <[Shiffman.Cari@epa.gov](mailto:Shiffman.Cari@epa.gov)>; Branning, Hannah <[Branning.Hannah@epa.gov](mailto:Branning.Hannah@epa.gov)>; Kelley, Rosemarie <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)>  
**Subject:** RE: Follow-up Items to OCE Weekly 4-25-19

# Ex. 5 AC/DP

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**From:** Buterbaugh, Kristin  
**Sent:** Thursday, April 25, 2019 4:18 PM  
**To:** Sullivan, Greg <[Sullivan.Greg@epa.gov](mailto:Sullivan.Greg@epa.gov)>; Saenz, Diana <[Saenz.Diana@epa.gov](mailto:Saenz.Diana@epa.gov)>; Fogarty, Johnpc <[Fogarty.Johnpc@epa.gov](mailto:Fogarty.Johnpc@epa.gov)>; Makepeace, Caroline <[Makepeace.Caroline@epa.gov](mailto:Makepeace.Caroline@epa.gov)>  
**Cc:** Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>; Traylor, Patrick <[traylor.patrick@epa.gov](mailto:traylor.patrick@epa.gov)>; Shiffman, Cari <[Shiffman.Cari@epa.gov](mailto:Shiffman.Cari@epa.gov)>; Branning, Hannah <[Branning.Hannah@epa.gov](mailto:Branning.Hannah@epa.gov)>; Kelley, Rosemarie <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)>  
**Subject:** Follow-up Items to OCE Weekly 4-25-19

Good afternoon,

Here the follow-up items from today's OCE Weekly:

1. National Mining Association meeting

- 
- 

Ex. 5 AC/DP

2. SEP meeting

- 

Ex. 5 AC/DP

# Ex. 5 AC/DP

Please let me know if there are any questions. Thank you.

**Kristin Buterbaugh**

Special Assistant

OECA - Office of Civil Enforcement

U.S. Environmental Protection Agency

WJC South 3119C

1200 Pennsylvania Avenue, NW

Washington, DC 20460

(202) 564-4479

[Buterbaugh.Kristin@epa.gov](mailto:Buterbaugh.Kristin@epa.gov)

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Message

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**From:** Fogarty, Johnpc [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]  
**Sent:** 5/15/2019 3:37:15 PM  
**To:** Makepeace, Caroline [Makepeace.Caroline@epa.gov]  
**Subject:** RE: Trying to get my arms around this

Current state of affairs (as of noon 5/15):

DOJ:

**Ex. 5 AC/AWP, Ex. 7(a)**

EPA:

**Ex. 5 AC/DP**

**Ex. 5 AC/AWP/DP, Ex. 7(a)**

Message

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**From:** Fogarty, Johnpc [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]  
**Sent:** 4/29/2019 1:28:44 PM  
**To:** Makepeace, Caroline [Makepeace.Caroline@epa.gov]  
**CC:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Porter, Amy [Porter.Amy@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]  
**Subject:** RE: SEP meeting with DOJ  
**Attachments:** Possible Talking Points for meeting with Jesse Pannucio 4 28 19.revd.docx

Ugh - sorry to hear about that! Revised draft attached - I almost got to the end on an initial run-through.

---

**From:** Makepeace, Caroline  
**Sent:** Monday, April 29, 2019 8:29 AM  
**To:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Cc:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>  
**Subject:** Re: SEP meeting with DOJ

## Ex. 6 Personal Privacy (PP)

Sent from my iPhone

On Apr 29, 2019, at 8:18 AM, Fogarty, Johnpc <Fogarty.Johnpc@epa.gov> wrote:

## Ex. 5 AC/DP

Caroline, I'll take a first cut and then hand it to you by 9 am.

---

**From:** Kelley, Rosemarie  
**Sent:** Sunday, April 28, 2019 8:24 PM  
**To:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Cc:** Porter, Amy <Porter.Amy@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>  
**Subject:** Fw: SEP meeting with DOJ

John, Caroline --

This paper needs your review/revisions. The language needs to be tightened up.

Rosemarie

---

**From:** Starfield, Lawrence  
**Sent:** Sunday, April 28, 2019 6:38 PM  
**To:** Bodine, Susan  
**Cc:** Kelley, Rosemarie; Fogarty, Johnpc; Makepeace, Caroline  
**Subject:** SEP meeting with DOJ

Susan,

# Ex. 5 AC/DP

For your consideration.

Larry

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Message

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**From:** Fogarty, Johnpc [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]  
**Sent:** 4/25/2019 9:05:44 PM  
**To:** Makepeace, Caroline [Makepeace.Caroline@epa.gov]  
**Subject:** RE: Follow-up Items to OCE Weekly 4-25-19

**Ex. 5 AC/DP**

---

**From:** Makepeace, Caroline  
**Sent:** Thursday, April 25, 2019 5:03 PM  
**To:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** RE: Follow-up Items to OCE Weekly 4-25-19

**Ex. 5 AC/DP**

Caroline Makepeace  
Senior Counsel  
Crosscutting Policy Staff  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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---

**From:** Fogarty, Johnpc  
**Sent:** Thursday, April 25, 2019 4:41 PM  
**To:** Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Buterbaugh, Kristin <[Buterbaugh.Kristin@epa.gov](mailto:Buterbaugh.Kristin@epa.gov)>; Sullivan, Greg <[Sullivan.Greg@epa.gov](mailto:Sullivan.Greg@epa.gov)>; Saenz, Diana <[Saenz.Diana@epa.gov](mailto:Saenz.Diana@epa.gov)>; Makepeace, Caroline <[Makepeace.Caroline@epa.gov](mailto:Makepeace.Caroline@epa.gov)>  
**Cc:** Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>; Traylor, Patrick <[traylor.patrick@epa.gov](mailto:traylor.patrick@epa.gov)>; Shiffman, Cari <[Shiffman.Cari@epa.gov](mailto:Shiffman.Cari@epa.gov)>; Branning, Hannah <[Branning.Hannah@epa.gov](mailto:Branning.Hannah@epa.gov)>; Kelley, Rosemarie <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)>  
**Subject:** RE: Follow-up Items to OCE Weekly 4-25-19

**Ex. 5 AC/DP**

**From:** Bodine, Susan  
**Sent:** Thursday, April 25, 2019 4:40 PM  
**To:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Sullivan, Greg <Sullivan.Greg@epa.gov>; Saenz, Diana <Saenz.Diana@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Cc:** Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Branning, Hannah <Branning.Hannah@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** RE: Follow-up Items to OCE Weekly 4-25-19

## Ex. 5 AC/DP

**From:** Fogarty, Johnpc  
**Sent:** Thursday, April 25, 2019 4:38 PM  
**To:** Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Sullivan, Greg <Sullivan.Greg@epa.gov>; Saenz, Diana <Saenz.Diana@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Cc:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Branning, Hannah <Branning.Hannah@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** RE: Follow-up Items to OCE Weekly 4-25-19

## Ex. 5 AC/DP

**From:** Buterbaugh, Kristin  
**Sent:** Thursday, April 25, 2019 4:18 PM  
**To:** Sullivan, Greg <Sullivan.Greg@epa.gov>; Saenz, Diana <Saenz.Diana@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Cc:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Branning, Hannah <Branning.Hannah@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** Follow-up Items to OCE Weekly 4-25-19

Good afternoon,

Here the follow-up items from today's OCE Weekly:

- 1) National Mining Association meeting

- 
- 

## Ex. 5 AC/DP

- 2) SEP meeting

- 
- 

## Ex. 5 AC/DP

Please let me know if there are any questions. Thank you.

**Kristin Buterbaugh**  
Special Assistant



OECA - Office of Civil Enforcement  
U.S. Environmental Protection Agency  
WJC South 3119C  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
(202) 564-4479  
[Buterbaugh.Kristin@epa.gov](mailto:Buterbaugh.Kristin@epa.gov)

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Message

---

**From:** Fogarty, Johnpc [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]  
**Sent:** 9/12/2019 4:02:22 PM  
**To:** Makepeace, Caroline [Makepeace.Caroline@epa.gov]  
**Subject:** RE: any thoughts welcome

Some suggestions below- not much

---

**From:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Sent:** Thursday, September 12, 2019 11:43 AM  
**To:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** RE: any thoughts welcome

Here's the better (sorta) text for the note

**Ex. 5 AC/AWP/DP, Ex. 7(a)**

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement  
US Environmental Protection Agency

202-564-6012

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---

**From:** Makepeace, Caroline  
**Sent:** Thursday, September 12, 2019 11:24 AM  
**To:** Fogarty, Johnpc <[Fogarty.Johnpc@epa.gov](mailto:Fogarty.Johnpc@epa.gov)>  
**Subject:** any thoughts welcome

**Ex. 5 AC/AWP/DP, Ex. 7(a)**

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

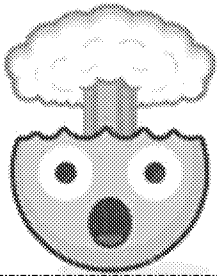
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ED\_004082K\_00001874-00002

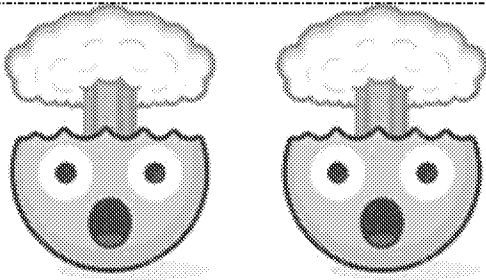
Message

**From:** Fogarty, Johnpc [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]  
**Sent:** 4/2/2019 1:18:34 PM  
**To:** Makepeace, Caroline [Makepeace.Caroline@epa.gov]  
**Subject:** RE: How'd it go

## Ex. 5 AC/DP



## Ex. 5 AC/DP



Ex. 6 Personal Privacy (PP)

-----Original Message-----

**From:** Makepeace, Caroline  
**Sent:** Tuesday, April 02, 2019 9:06 AM  
**To:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** Re: How'd it go

Lay it on me! **Ex. 6 Personal Privacy (PP)**

Sent from my iPhone

> On Apr 1, 2019, at 6:25 PM, Fogarty, Johnpc <Fogarty.Johnpc@epa.gov> wrote:

>

> Just found out what the sep kerfluffle is all about. You won't believe it.

>

> Sent from my iPhone

>

>> On Apr 1, 2019, at 5:54 PM, Makepeace, Caroline <Makepeace.Caroline@epa.gov> wrote:

>>

>> You. Are. On.

>>

>> Sent from my iPhone

>>

>>> On Apr 1, 2019, at 5:35 PM, Fogarty, Johnpc <Fogarty.Johnpc@epa.gov> wrote:

>>>

## Ex. 6 Personal Privacy (PP)

>>>

>>> -----Original Message-----

>>> From: Makepeace, Caroline

>>> Sent: Monday, April 01, 2019 5:30 PM

>>> To: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>

>>> Subject: Re: How'd it go

>>>

>>> Getting off bus, to dig in the dirt and put off thinking about whatever psychic meltdown this political are having over SEPs. Hope it's not as bad as it hints.

>>>

>>> Sent from my iPhone

>>>

>>>> On Apr 1, 2019, at 5:01 PM, Makepeace, Caroline <Makepeace.Caroline@epa.gov> wrote:

>>>>

## Ex. 6 Personal Privacy (PP)

>>>>

>>>> Sent from my iPhone

>>>>

>>>>> On Apr 1, 2019, at 4:50 PM, Fogarty, Johnpc <Fogarty.Johnpc@epa.gov> wrote:

>>>>>

>>>>> It went as expected. And you?

>>>>>

>>>>> Sent from my iPhone

>>>>>

>>>>>> On Apr 1, 2019, at 3:53 PM, Makepeace, Caroline <Makepeace.Caroline@epa.gov> wrote:

>>>>>>

>>>>>> With Patrick et al on Friday. No or less than not quite no? ...;)

>>>>>>

>>>>>> Sent from my iPhone

Message

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**From:** Fogarty, Johnpc [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]  
**Sent:** 4/1/2019 10:15:04 PM  
**To:** Porter, Amy [Porter.Amy@epa.gov]  
**CC:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]  
**Subject:** RE: Has OLC ever opined on SEP policy?

# Ex. 5 AC/DP

Essentially the same discussion is in the prior versions of the SEP policy.

---

**From:** Porter, Amy  
**Sent:** Monday, April 01, 2019 5:53 PM  
**To:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Cc:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Subject:** Re: Has OLC ever opined on SEP policy?

Thanks a million, John!

Sent from my iPhone

On Apr 1, 2019, at 5:22 PM, Fogarty, Johnpc <Fogarty.Johnpc@epa.gov> wrote:

FWIW:

# Ex. 5 AC/DP

---

**From:** Porter, Amy  
**Sent:** Monday, April 01, 2019 4:12 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Cc:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Subject:** FW: Has OLC ever opined on SEP policy?

Rosemarie – Please see immediately below from John. I understand this is not urgent and I will talk to Caroline tomorrow.

Thanks  
Amy

---

**From:** Fogarty, Johnpc  
**Sent:** Monday, April 01, 2019 4:10 PM  
**To:** Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** Re: Has OLC ever opined on SEP policy?

Not formally. EES may have talked with them. This has been through the legal wringer several times over the years. There's some legal opinions (like GAO maybe? I forget) cited the sep policy.

Sent from my iPhone

On Apr 1, 2019, at 4:00 PM, Porter, Amy <Porter.Amy@epa.gov> wrote:

Do you know? Caroline is out.

---

**From:** Kelley, Rosemarie  
**Sent:** Monday, April 01, 2019 3:59 PM  
**To:** Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** RE: Has OLC ever opined on SEP policy?

On DOJ call now. SEPs are an issue for Jeff Clark.

---

**From:** Porter, Amy  
**Sent:** Monday, April 01, 2019 3:58 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** RE: Has OLC ever opined on SEP policy?

I don't know but will check with Caroline.

---

**From:** Kelley, Rosemarie  
**Sent:** Monday, April 01, 2019 3:51 PM  
**To:** Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** Has OLC ever opined on SEP policy?

Regards,  
Rosemarie A. Kelley, Director  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
202-564-4014

Message

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**From:** Fogarty, Johnpc [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]  
**Sent:** 4/24/2019 8:40:10 PM  
**To:** Makepeace, Caroline [Makepeace.Caroline@epa.gov]; Porter, Amy [Porter.Amy@epa.gov]  
**Subject:** RE: SEP Briefing Prep --- municipal CDs

ok

---

**From:** Makepeace, Caroline  
**Sent:** Wednesday, April 24, 2019 4:36 PM  
**To:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** RE: SEP Briefing Prep --- municipal CDs

**Ex. 5 AC/DP**

Caroline Makepeace  
Senior Counsel  
Crosscutting Policy Staff  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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**From:** Fogarty, Johnpc  
**Sent:** Wednesday, April 24, 2019 4:34 PM  
**To:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** RE: SEP Briefing Prep --- municipal CDs

**Ex. 5 AC/DP**

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**From:** Makepeace, Caroline  
**Sent:** Wednesday, April 24, 2019 4:32 PM  
**To:** Porter, Amy <Porter.Amy@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** FW: SEP Briefing Prep --- municipal CDs  
**Importance:** High

**Ex. 5 AC/DP**

Caroline Makepeace  
Senior Counsel  
Crosscutting Policy Staff  
Office of Civil Enforcement



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**From:** King, Carol  
**Sent:** Tuesday, April 16, 2019 3:51 PM  
**To:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Cc:** Pollins, Mark <Pollins.Mark@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Baptista, Chrisna <Baptista.Chrisna@epa.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** RE: SEP Briefing Prep --- municipal CDs  
**Importance:** High

Hi Caroline and John,

In response to the requests to gather recently approved municipal CDs and representative sample supplemental environmental projects (SEPs), please see the following from WED's municipal enforcement branch.

#### **Municipal CDs with Federal SEPS**

CWA CD with Gary Sanitation District and Gary, Indiana (\*lodged in 2016, entered in March 2018): Under the settlement, GSD and the City will implement injunctive relief that will address combined sewer overflows (CSOs) occurring in violation of the CWA. GSD and the City must pay a civil penalty and also implement SEPs that involve the removal of invasive plant species and restoration of native vegetation to stream banks and riparian areas in Northwest Indiana, including on the Grand Calumet River, a waterbody that has been impacted by the overflows from GSD and the City sewer system. The projects will deliver environmental benefits including improving habitats, eliminating an unnatural monoculture, preventing shoreline erosion, increasing stormwater retention, benefiting local hydrology and improving natural filtration of wet weather flows. *See link for a copy of the CD* <https://www.epa.gov/enforcement/gary-sanitary-district-and-city-gary-clean-water-settlement>

CWA CD with Lancaster, PA (2017): The decree requires Lancaster to complete early action projects and to develop and implement a long-term control plan (LTCP) to address CSOs. The City will pay a civil penalty and also implement a SEP involving the daylighting and restoration of a segment of Groff's Run that is intended to restore approximately 1,350 linear feet of urban stream channel, reconnect wetlands to the Conestoga River, and establish additional habitat for micro- and macro-biota, thereby enhancing water quality. The project will also help reduce localized flooding from unmanaged impervious areas by providing additional stream capacity and flow rate attenuation above the confluence of the Conestoga River. *See link for a copy of the CD* <https://www.epa.gov/enforcement/city-lancaster-pa-clean-water-act-settlement>

CWA CD with Middletown, OH (2018): The decree requires Middletown to implement its approved LTCP to address CSOs, complete wastewater treatment plant upgrades, and complete other sewer system rehabilitation and replacement work. The City will also do a SEP involving the capping of a designated portion of the sediment bed in the hydraulic canal. These sediments have been impacted by historical industrial use of the hydraulic canal. The SEP will effectively eliminate exposure of benthic organisms to cadmium in impacted sediments in the subject area. Such capping should also serve to minimize potential erosion and entrainment of impacted sediment downstream towards the Great Miami River. *See link for CD* <https://www.epa.gov/enforcement/middletown-ohio-clean-water-act-settlement>

#### **Municipal CDs without Federal SEPs**

SDWA CD with City of New York, NY (2019): Under the decree, NYC will address its noncompliance with the Long-Term Term 2 Enhanced Surface Water Treatment Rule by covering its Hillview Reservoir. It will also implement interim public health protection measures. The City will pay the U.S. a civil penalty for its SDWA violations. There is also a state only SEP, but no federal SEP. *PDF attached.*

CWA CD with Cleveland Heights, OH (2017): Partial CD. No SEP or civil penalty. *PDF attached.*

CWA CD with Hammond, IN (2017): The decree resolves HSD's failure to fulfill many of the requirements of its previous 1999 Decree, which addressed CWA violations involving its ownership and operation of its wastewater treatment plant and sewage collection system. Hammond will implement injunctive relief that will address CSOs and pay a civil penalty. While there is no federal SEP, there is a State SEP. *PDF attached.*

CWA CD with Holyoke, MA (2019): Partial settlement. No SEP or civil penalty. *PDF attached.*

---

**From:** Bahk, Benjamin

**Sent:** Tuesday, April 16, 2019 12:49 PM

**To:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>; King, Carol <King.Carol@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>

**Cc:** Baptista, Chrisna <Baptista.Chrisna@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Greenwald, Kathryn <Greenwald.Kathryn@epa.gov>; Raack, Melissa <Raack.Melissa@epa.gov>

**Subject:** RE: SEP Briefing Prep

I'm ccing Kathy and Melissa for NYRA and Starkist respectively in case you need additional information than what is already available in the links below:

Starkist:

<https://www.epa.gov/enforcement/starkist-clean-water-act-clean-air-act-resource-conservation-and-recovery-and-emergency>

NYRA:

<https://www.epa.gov/enforcement/new-york-racing-association-nyra-clean-water-act-settlement>

Ben Bahk  
Branch Chief, Industrial Branch  
U.S. Environmental Protection Agency  
Office of Civil Enforcement  
1200 Pennsylvania Ave. NW Mail Code 2243A  
Washington, DC 20460  
202-564-4293

Help eliminate environmental violations - report tips and complaints at:

<http://www.epa.gov/compliance/complaints/index.html>

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REVIEW. IF THIS MESSAGE HAS BEEN RECEIVED BY YOU IN ERROR, YOU ARE INSTRUCTED TO DELETE THIS MESSAGE FROM YOUR MACHINE AND ALL STORAGE MEDIA WHETHER ELECTRONIC OR HARD COPY.

---

**From:** Makepeace, Caroline  
**Sent:** Tuesday, April 16, 2019 11:53 AM  
**To:** King, Carol <King.Carol@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>  
**Cc:** Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Baptista, Chrisna <Baptista.Chrisna@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** RE: SEP Briefing Prep

Would be good to have short description of cases and violations and their SEPs.

Could you all also provide US v NY Racing Association, Lancaster and Starkist?

Also, I have seen mention of a 2017 case "Us v New York" that apparently has urine separation system, constructed wetlands and nitrogen reducing technology projects? Sounds like a water case (maybe that's horse urine??? Haha...)

Thanks!

Caroline Makepeace  
Senior Counsel  
Crosscutting Policy Staff  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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---

**From:** King, Carol  
**Sent:** Tuesday, April 16, 2019 11:33 AM  
**To:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>  
**Cc:** Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Baptista, Chrisna <Baptista.Chrisna@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** RE: SEP Briefing Prep

**Ex. 5 AC/DP**

---

**From:** Makepeace, Caroline  
**Sent:** Tuesday, April 16, 2019 11:27 AM  
**To:** Pollins, Mark <Pollins.Mark@epa.gov>; King, Carol <King.Carol@epa.gov>  
**Cc:** Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Baptista, Chrisna <Baptista.Chrisna@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** RE: SEP Briefing Prep

**Ex. 5 AC/DP**

**Ex. 7(A)**

Caroline Makepeace  
Senior Counsel  
Crosscutting Policy Staff  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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---

**From:** Pollins, Mark  
**Sent:** Tuesday, April 16, 2019 11:00 AM  
**To:** King, Carol <[King.Carol@epa.gov](mailto:King.Carol@epa.gov)>  
**Cc:** Bahk, Benjamin <[Bahk.Benjamin@epa.gov](mailto:Bahk.Benjamin@epa.gov)>; Baptista, Chrisna <[Baptista.Chrisna@epa.gov](mailto:Baptista.Chrisna@epa.gov)>; Denton, Loren <[Denton.Loren@epa.gov](mailto:Denton.Loren@epa.gov)>; Makepeace, Caroline <[Makepeace.Caroline@epa.gov](mailto:Makepeace.Caroline@epa.gov)>  
**Subject:** Re: SEP Briefing Prep

Thanks. We please forward to Caroline when ready.

Sent from my iPhone

On Apr 16, 2019, at 10:00 AM, King, Carol <[King.Carol@epa.gov](mailto:King.Carol@epa.gov)> wrote:

Thanks Mark. We will have something for you today.

**Ex. 5 AC/DP**

Thanks, Carol

---

**From:** Pollins, Mark  
**Sent:** Monday, April 15, 2019 5:48 PM  
**To:** Bahk, Benjamin <[Bahk.Benjamin@epa.gov](mailto:Bahk.Benjamin@epa.gov)>; Baptista, Chrisna <[Baptista.Chrisna@epa.gov](mailto:Baptista.Chrisna@epa.gov)>; King, Carol <[King.Carol@epa.gov](mailto:King.Carol@epa.gov)>; Denton, Loren <[Denton.Loren@epa.gov](mailto:Denton.Loren@epa.gov)>  
**Subject:** FW: SEP Briefing Prep

Mark Pollins, Director  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance (OECA)  
U.S. Environmental Protection Agency  
Phone: (202) 564-4001  
Fax: (202) 564-0018

---

**From:** Porter, Amy  
**Sent:** Monday, April 15, 2019 10:40 AM  
**To:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Cc:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; OKeefe, Susan <OKeefe.Susan@epa.gov>; Chapman, Apple <Chapman.Apple@epa.gov>  
**Subject:** RE: SEP Briefing Prep

I asked managers to send examples to you and John by COB tomorrow.

---

**From:** Makepeace, Caroline  
**Sent:** Monday, April 15, 2019 10:28 AM  
**To:** Porter, Amy <Porter.Amy@epa.gov>  
**Cc:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; OKeefe, Susan <OKeefe.Susan@epa.gov>; Chapman, Apple <Chapman.Apple@epa.gov>  
**Subject:** RE: SEP Briefing Prep

Thanks!!

Caroline Makepeace  
Senior Counsel  
Crosscutting Policy Staff  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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---

**From:** Porter, Amy  
**Sent:** Monday, April 15, 2019 10:27 AM  
**To:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Cc:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; OKeefe, Susan <OKeefe.Susan@epa.gov>; Chapman, Apple <Chapman.Apple@epa.gov>  
**Subject:** RE: SEP Briefing Prep

Yes, I can ask at the managers' meeting.

---

**From:** Makepeace, Caroline  
**Sent:** Monday, April 15, 2019 10:15 AM  
**To:** Porter, Amy <Porter.Amy@epa.gov>  
**Cc:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; OKeefe, Susan <OKeefe.Susan@epa.gov>; Chapman, Apple <Chapman.Apple@epa.gov>  
**Subject:** Re: SEP Briefing Prep

This sounds good. Because I do not see all (or even most) SEPs by any stretch of the imagination, it would be very helpful if you could ask the divisions for help with write-ups of their best most recent SEPs. Maybe a contact in each division?

Sent from my iPhone

On Apr 15, 2019, at 10:01 AM, Porter, Amy <[Porter.Amy@epa.gov](mailto:Porter.Amy@epa.gov)> wrote:

Caroline –

**Ex. 5 AC/DP**

Please let us know if any questions.

Amy

Cc'ing Susan O'Keefe who will be acting for me, Mark who will be acting for Rosemarie T-Th and Apple who will be acting for Rosemarie on Friday. As far as I know only Caroline (and John if he can make it) are actually attending the DOJ briefing but if anyone has any different info please let me know.

Message

---

**From:** Fogarty, Johnpc [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]  
**Sent:** 4/5/2019 8:31:44 PM  
**To:** Makepeace, Caroline [Makepeace.Caroline@epa.gov]  
**Subject:** RE: Here's 3 DOJ memos that affect SEP and mitigation

Yeah, jury's still out on that one a little bit, but I thought there was a third one.

---

**From:** Makepeace, Caroline  
**Sent:** Friday, April 05, 2019 4:25 PM  
**To:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** RE: Here's 3 DOJ memos that affect SEP and mitigation

Just the settlements with muni one, which we would say doesn't affect them, but may be considered to do so...☺

Caroline Makepeace  
Senior Counsel  
Crosscutting Policy Staff  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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---

**From:** Fogarty, Johnpc  
**Sent:** Friday, April 05, 2019 4:21 PM  
**To:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Subject:** Here's 3 DOJ memos that affect SEP and mitigation

The original Sessions memo on payments to 3rd parties (affects both SEP and mitigation):

<< File: DOJ Guidance on Third Party Payments.pdf >>

The ENRD memo going into more detail about the Sessions memo (also affects SEP and mitigation, but also says on p 8 that if you follow the SEP policy, you're golden):

<< File: ENRD Memorandum on Payments to Third Parties.pdf >>

Another ENRD memo that basically says that mitigation has to be more or less proportional to the harm (can be less, but not punitive: p. 3 "[W]hile mitigation can be an important remedy obtained in some environmental cases, it is not a penalty. Therefore, mitigation should be calculated to address the extent of actual harm and must not be used as an additional means of penalizing a defendant."):

<< File: DOJ Memo on Enforcement Principles.pdf >>

I want to say there's another Sessions memo that affects SEP and/mitigation, but I'm not sure.

Message

---

**From:** Fogarty, Johnpc [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]  
**Sent:** 4/5/2019 8:21:12 PM  
**To:** Makepeace, Caroline [Makepeace.Caroline@epa.gov]  
**Subject:** Here's 3 DOJ memos that affect SEP and mitigation  
**Attachments:** DOJ Guidance on Third Party Payments.pdf; ENRD Memorandum on Payments to Third Parties.pdf; DOJ Memo on Enforcement Principles.pdf

The original Sessions memo on payments to 3rd parties (affects both SEP and mitigation):



DOJ Guidance on  
Third Party Pay...

The ENRD memo going into more detail about the Sessions memo (also affects SEP and mitigation, but also says on p 8 that if you follow the SEP policy, you're golden):



ENRD  
Memorandum on...

Another ENRD memo that basically says that mitigation has to be more or less proportional to the harm (can be less, but not punitive: p. 3 "[W]hile mitigation can be an important remedy obtained in some environmental cases, it is not a penalty. Therefore, mitigation should be calculated to address the extent of actual harm and must not be used as an additional means of penalizing a defendant."):



DOJ Memo on  
Enforcement Pri...

I want to say there's another Sessions memo that affects SEP and/mitigation, but I'm not sure.



Message

---

**From:** Fogarty, Johnpc [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]  
**Sent:** 4/24/2019 7:57:05 PM  
**To:** Porter, Amy [Porter.Amy@epa.gov]  
**CC:** Makepeace, Caroline [Makepeace.Caroline@epa.gov]  
**Subject:** RE: SEP Briefing Prep

Yes they should.

---

**From:** Porter, Amy  
**Sent:** Wednesday, April 24, 2019 3:56 PM  
**To:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Cc:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Subject:** FW: SEP Briefing Prep

John –

I'm talking with Caroline and realize WED never responded to the 2<sup>nd</sup> highlighted item below. Do you think it is worth doing for the Tuesday meeting?

Thanks  
Amy

---

**From:** Porter, Amy  
**Sent:** Monday, April 15, 2019 10:04 AM  
**To:** Pollins, Mark <Pollins.Mark@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>  
**Subject:** FW: SEP Briefing Prep

WED action items highlighted below.

---

**From:** Porter, Amy  
**Sent:** Monday, April 15, 2019 10:02 AM  
**To:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Cc:** Rosemarie Kelley (Kelley.Rosemarie@epa.gov) <Kelley.Rosemarie@epa.gov>; Johnpc Fogarty <Fogarty.Johnpc@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; OKeefe, Susan <OKeefe.Susan@epa.gov>; Chapman, Apple <Chapman.Apple@epa.gov>  
**Subject:** SEP Briefing Prep

Caroline –

# Ex. 5 AC/DP

# Ex. 5 AC/DP

Please let us know if any questions.

Amy

Cc:ing Susan O'Keefe who will be acting for me, Mark who will be acting for Rosemarie T-Th and Apple who will be acting for Rosemarie on Friday. As far as I know only Caroline (and John if he can make it) are actually attending the DOJ briefing but if anyone has any different info please let me know.

Message

---

**From:** Fogarty, Johnpc [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]  
**Sent:** 8/23/2019 1:33:16 PM  
**To:** Makepeace, Caroline [Makepeace.Caroline@epa.gov]  
**Subject:** RE: desk statement

No worries

---

**From:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Sent:** Friday, August 23, 2019 9:27 AM  
**To:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** Fwd: desk statement

Whoops forgot to cc you!!!

Sent from my iPhone

Begin forwarded message:

**From:** "Makepeace, Caroline" <Makepeace.Caroline@epa.gov>  
**Date:** August 23, 2019 at 9:26:30 AM EDT  
**To:** "Egan, Patrick" <egan.patrick@epa.gov>, "Hull, George" <Hull.George@epa.gov>  
**Subject:** Fwd: desk statement

George/Pat,

## Ex. 5 Deliberative Process (DP)

Sent from my iPhone

Begin forwarded message:

**From:** "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>  
**Date:** August 22, 2019 at 6:37:33 PM EDT  
**To:** "Makepeace, Caroline" <Makepeace.Caroline@epa.gov>  
**Cc:** "Porter, Amy" <Porter.Amy@epa.gov>, "Fogarty, Johnpc" <Fogarty.Johnpc@epa.gov>  
**Subject:** FW: desk statement

Please connect with George/Pat on this. Thanks.

Rosemarie

---

**From:** Starfield, Lawrence <Starfield.Lawrence@epa.gov>  
**Sent:** Thursday, August 22, 2019 6:07 PM  
**To:** Hull, George <Hull.George@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>  
**Cc:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>  
**Subject:** desk statement

Please work with OCE on a desk statement re: SEPs. Three key points:

1. The new policy is DOJ's.
2. EPA has not changed its SEP policy.
3. EPA is continuing to use SEPs in its administrative cases.

Then we should share with it the Regions.

Thanks.

Larry

Message

---

**From:** Fogarty, Johnpc [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]  
**Sent:** 8/23/2019 1:20:49 PM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]  
**CC:** Porter, Amy [Porter.Amy@epa.gov]  
**Subject:** RE: desk statement

On it.

---

**From:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Sent:** Thursday, August 22, 2019 6:38 PM  
**To:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Cc:** Porter, Amy <Porter.Amy@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** FW: desk statement

Please connect with George/Pat on this. Thanks.

Rosemarie

---

**From:** Starfield, Lawrence <Starfield.Lawrence@epa.gov>  
**Sent:** Thursday, August 22, 2019 6:07 PM  
**To:** Hull, George <Hull.George@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>  
**Cc:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>  
**Subject:** desk statement

Please work with OCE on a desk statement re: SEPs. Three key points:

1. The new policy is DOJ's.
2. EPA has not changed its SEP policy.
3. EPA is continuing to use SEPs in its administrative cases.

Then we should share with it the Regions.

Thanks.

Larry

Message

---

**From:** Fogarty, Johnpc [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]  
**Sent:** 7/20/2019 8:08:23 PM  
**To:** Porter, Amy [Porter.Amy@epa.gov]  
**Subject:** Re: Materials for Claire Murray SEP meeting

I don't - Caroline was pretty much on point for that. Sorry.

Sent from my iPhone

On Jul 19, 2019, at 4:08 PM, Porter, Amy <Porter.Amy@epa.gov> wrote:

Hey John – Do you know if any of the attached are what DOJ prepared for Claire?

Thanks  
Amy

---

**From:** Makepeace, Caroline  
**Sent:** Tuesday, May 28, 2019 2:57 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>  
**Cc:** Shiffman, Cari <Shiffman.Cari@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>  
**Subject:** Materials for Claire Murray SEP meeting

Attached are talking points and background materials for tomorrow's meeting with Claire Murray, on SEPs in state and local government cases.

- 1) Talking Points for the Wednesday discussion with Claire Murray
- 2) Examples of Typical Muni SEPs
- 3) Synopsis of current state of affairs on SEPs, with DOJ/AAG
- 4) SEP Fact Sheet
- 5) 1977 MOU with DOJ

# Ex. 5 AC/DP

Just let us know if you have any questions.

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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---

**From:** Makepeace, Caroline

**Sent:** Tuesday, May 28, 2019 12:10 PM

**To:** Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>

**Cc:** Shiffman, Cari <[Shiffman.Cari@epa.gov](mailto:Shiffman.Cari@epa.gov)>; Rosemarie Kelley <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)>; Karin

Koslow <[Koslow.Karin@epa.gov](mailto:Koslow.Karin@epa.gov)>; Fogarty, Johnpc <[Fogarty.Johnpc@epa.gov](mailto:Fogarty.Johnpc@epa.gov)>; Amy Porter

<[Porter.Amy@epa.gov](mailto:Porter.Amy@epa.gov)>; Buterbaugh, Kristin <[Buterbaugh.Kristin@epa.gov](mailto:Buterbaugh.Kristin@epa.gov)>

**Subject:** Advance copy of Revised Talking points for Claire Murray SEP meeting

Susan –

Cari suggested that, since time is tight, we share the attached “advance copy” of revised talking points to see if the new first set of bullets works for you, to reflect the conversation at the OCE general. And, to answer any questions you might have.

*Later today* we will be following up with:

- 1) the list of muni SEP examples (no changes);
- 2) the SEP fact sheet (also no changes);
- 3) the “state of play” on SEPs;

<b>Ex. 5 AC/DP</b>
--------------------

5) a clean copy of the 1977 MOU with DOJ. And, of course, the talking points with any edits you’d like.

Caroline Makepeace

Senior Counsel

Office of Civil Enforcement

US Environmental Protection Agency

202-564-6012

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<Talking Points for Meeting with PDAAG Claire Murray on Application of the Principles and Procedures for Civil Consent Decrees and Settlement Agreements with State.5.28.2019.docx>

<Examples of Typical Muni SEPs.5.22.2019.docx>

<Fundamental Facts About SEPs.5.22.2019.docx>

<Current State of Affairs on SEPs with DOJ.5.22.2019.docx>

<EPA-DOJ MOU 1977-42 FR 48942 (003).pdf>

## Appointment

---

**From:** Fogarty, Johnpc [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]  
**Sent:** 7/17/2019 6:55:18 PM  
**To:** Koslow, Karin [Koslow.Karin@epa.gov]  
**Subject:** Accepted: Quick strategy discussion re: recommendation for next steps vis a vis DOJ Draft SEP memo  
**Location:** Rosemarie's office  
  
**Start:** 7/17/2019 8:00:00 PM  
**End:** 7/17/2019 8:30:00 PM  
**Show Time As:** Busy



Message

---

**From:** Fogarty, Johnpc [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]  
**Sent:** 5/28/2019 6:18:33 PM  
**To:** Makepeace, Caroline [Makepeace.Caroline@epa.gov]  
**Subject:** RE: Advance copy of Revised Talking points for Claire Murray SEP meeting

Choose whatever makes sense to you – I'm on a tech-heavy call.

---

**From:** Makepeace, Caroline  
**Sent:** Tuesday, May 28, 2019 1:52 PM  
**To:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** RE: Advance copy of Revised Talking points for Claire Murray SEP meeting

So for Plan B – what about for the cover note:

**Ex. 5 AC/DP**

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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---

**From:** Makepeace, Caroline  
**Sent:** Tuesday, May 28, 2019 1:27 PM  
**To:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** RE: Advance copy of Revised Talking points for Claire Murray SEP meeting

Well that was plan A. But remember, we aren't pushing to get that info today. So I'm not putting that together now.

Caroline Makepeace  
Senior Counsel

Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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---

**From:** Fogarty, Johnpc  
**Sent:** Tuesday, May 28, 2019 1:25 PM  
**To:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Subject:** RE: Advance copy of Revised Talking points for Claire Murray SEP meeting

**Ex. 5 AC/DP**

---

**From:** Makepeace, Caroline  
**Sent:** Tuesday, May 28, 2019 1:23 PM  
**To:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** FW: Advance copy of Revised Talking points for Claire Murray SEP meeting

**Ex. 5 AC/DP**

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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---

**From:** Makepeace, Caroline  
**Sent:** Tuesday, May 28, 2019 12:10 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>  
**Cc:** Shiffman, Cari <Shiffman.Cari@epa.gov>; Rosemarie Kelley <Kelley.Rosemarie@epa.gov>; Karin Koslow <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Amy Porter <Porter.Amy@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>  
**Subject:** Advance copy of Revised Talking points for Claire Murray SEP meeting

Susan –

Cari suggested that, since time is tight, we share the attached “advance copy” of revised talking points to see if the new first set of bullets works for you, to reflect the conversation at the OCE general. And, to answer any questions you might have.

*Later today* we will be following up with:

- 1) the list of muni SEP examples (no changes);
- 2) the SEP fact sheet (also no changes);
- 3) the “state of play” on SEPs;

**Ex. 5 AC/DP**

- 5) a clean copy of the 1977 MOU with DOJ. And, of course, the talking points with any edits you’d like.

Caroline Makepeace  
Senior Counsel

ED\_004082K\_00002287-00002

Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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Message

---

**From:** Fogarty, Johnpc [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]  
**Sent:** 5/28/2019 5:09:35 PM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]  
**Subject:** RE: Advance copy of Revised Talking points for Claire Murray SEP meeting

Yes – I took a look at the revised opening bullets in followup to last week’s general, and also suggested that Caroline get with Cari to see how best to package things for Susan. Cari told her that she (Susan) wouldn’t have a chance to review/ask any followup questions except for basically right then, so she (Caroline) sent the revised talking points to Susan when she did.

## Ex. 5 AC/DP

---

**From:** Kelley, Rosemarie  
**Sent:** Tuesday, May 28, 2019 12:54 PM  
**To:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** FW: Advance copy of Revised Talking points for Claire Murray SEP meeting

Is Caroline working with you on this?

Rosemarie

---

**From:** Makepeace, Caroline  
**Sent:** Tuesday, May 28, 2019 12:10 PM  
**To:** Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>  
**Cc:** Shiffman, Cari <[Shiffman.Cari@epa.gov](mailto:Shiffman.Cari@epa.gov)>; Kelley, Rosemarie <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)>; Koslow, Karin <[Koslow.Karin@epa.gov](mailto:Koslow.Karin@epa.gov)>; Fogarty, Johnpc <[Fogarty.Johnpc@epa.gov](mailto:Fogarty.Johnpc@epa.gov)>; Porter, Amy <[Porter.Amy@epa.gov](mailto:Porter.Amy@epa.gov)>; Buterbaugh, Kristin <[Buterbaugh.Kristin@epa.gov](mailto:Buterbaugh.Kristin@epa.gov)>  
**Subject:** Advance copy of Revised Talking points for Claire Murray SEP meeting

Susan –

Cari suggested that, since time is tight, we share the attached “advance copy” of revised talking points to see if the new first set of bullets works for you, to reflect the conversation at the OCE general. And, to answer any questions you might have.

*Later today* we will be following up with:

- 1) the list of muni SEP examples (no changes);
- 2) the SEP fact sheet (also no changes);
- 3) the “state of play” on SEPs;

## Ex. 5 AC/DP

- 5) a clean copy of the 1977 MOU with DOJ. And, of course, the talking points with any edits you’d like.

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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Message

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**From:** Fogarty, Johnpc [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]  
**Sent:** 5/28/2019 2:22:09 PM  
**To:** Makepeace, Caroline [Makepeace.Caroline@epa.gov]  
**Subject:** RE: SEP paper for tomorrow  
**Attachments:** EPA-DOJ MOU 1977-42 FR 48942.pdf

MOA attached – if you have adobe pro and can strip off the first page, should send to Munsel to add it to the intranet page w/our MOUs.

Couple suggested edits on the new bullets:

## Ex. 5 Deliberative Process (DP)

---

**From:** Makepeace, Caroline  
**Sent:** Tuesday, May 28, 2019 9:54 AM  
**To:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** SEP paper for tomorrow

I took a crack at revising. Nothing on the MOA—partly cause I still need to find a copy, partly cause I'm not sure this is the spot

<< File: Talking Points for Meeting with PDAAG Claire Murray on Application of the Principles and Procedures for Civil Consent Decrees and Settlement Agreements with State.5.28.2019.docx >>

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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---

**From:** Makepeace, Caroline  
**Sent:** Thursday, May 23, 2019 4:44 PM  
**To:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** RE: It was sort of noisy/garbled at the end

Basically to add

# Ex. 5 AC/DP

- You and I are supposed to go on Wed afternoon.

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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-----Original Message-----

From: Fogarty, Johnpc  
Sent: Thursday, May 23, 2019 4:26 PM  
To: Makepeace, Caroline <[Makepeace.Caroline@epa.gov](mailto:Makepeace.Caroline@epa.gov)>  
Subject: It was sort of noisy/garbled at the end

What are our marching orders/next steps?

Sent from my iPhone

Message

**From:** Fogarty, Johnpc [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]  
**Sent:** 5/21/2019 9:13:00 PM  
**To:** Makepeace, Caroline [Makepeace.Caroline@epa.gov]; Porter, Amy [Porter.Amy@epa.gov]  
**Subject:** RE: Current state of affairs on SEPs (as of 5/15/19)

## Ex. 5 AC/DP

**From:** Makepeace, Caroline  
**Sent:** Tuesday, May 21, 2019 5:00 PM  
**To:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** RE: Current state of affairs on SEPs (as of 5/15/19)

I'm going to be out tomorrow AM -- have [REDACTED] knows. Happily only in Chevy Chase, not Rockville this time.

## Ex. 6 Personal Privacy (PP)

So, attached are the pretty near final other documents;

- 1) Talking points for Murray meeting [REDACTED] **Ex. 5 AC/DP**
- 2) [REDACTED] **Ex. 5 AC/DP**
- 3) The SEP examples
- 3) SEP fact sheet
- 4) RK has the draft cover note for review, as do you both, but also attached here.

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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**From:** Fogarty, Johnpc  
**Sent:** Tuesday, May 21, 2019 4:48 PM  
**To:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** RE: Current state of affairs on SEPs (as of 5/15/19)

Cool. Let's finalize the docs by tomorrow am and pull together a full package including this.

**From:** Makepeace, Caroline  
**Sent:** Tuesday, May 21, 2019 4:43 PM  
**To:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** FW: Current state of affairs on SEPs (as of 5/15/19)

Just the updated version of this...

Current state of affairs on SEPs (as 5/21/19)



DOJ:

**Ex. 5 AC/AWP, Ex. 7(a)**

EPA:

**Ex. 5 AC/DP**

**Ex. 5 AC/AWP/DP, Ex. 7(a)**

Caroline Makepeace  
Senior Counsel  
Crosscutting Policy Staff  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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Message

**From:** Fogarty, Johnpc [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]  
**Sent:** 5/21/2019 3:19:42 PM  
**To:** Makepeace, Caroline [Makepeace.Caroline@epa.gov]  
**Subject:** RE: Will be in late-ish  
**Attachments:** Draft email for Susan. CDM.docx

email only

-----Original Message-----

From: Makepeace, Caroline  
Sent: Tuesday, May 21, 2019 11:01 AM  
To: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
Subject: RE: Will be in late-ish

A few tweaks for us to consider on email.

## Ex. 5 Deliberative Process (DP)

Attached is the fact sheet I was thinking of -- it's what we used for our internet site.

## Ex. 5 Deliberative Process (DP)

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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-----Original Message-----

From: Fogarty, Johnpc  
Sent: Tuesday, May 21, 2019 9:28 AM  
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
Subject: RE: Will be in late-ish

See attached on the talking points, tried to make the sentences a little shorter rather than something to be read verbatim, and flagged a couple questions for us, but overall it's good. Also attached is a first cut at a draft email, and an updated example list of SEPs (filled in a gap).

This is the one-pager on sep fundamentals I was thinking of:  
<http://intranet.epa.gov/oeca/oce/io/sep/guidance%20documents/seppolicyfactsheet.pdf>

-----Original Message-----

From: Makepeace, Caroline  
Sent: Monday, May 20, 2019 9:46 PM  
To: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
Subject: Will be in late-ish

## Ex. 6 Personal Privacy (PP)

but can we confab later on the DOJ prep, and what needs to be done on the talking points (sent to you on Friday) and other pieces and note et cetera.... all the fun stuff.

## Ex. 6 Personal Privacy (PP)

Sent from my iPhone

## Water Enforcement Division - SEPs and Mitigation Projects

### Private Lateral SEPs

Private Lateral SEPs have routinely been included in municipal CWA settlement. Here are some examples:

- **Jackson, MS:** Jackson paid a total of \$437,916 as a civil penalty for its Clean Water Act violations to the United States and the State of Mississippi. Jackson also agreed to spend \$875,000 on a private lateral supplemental environmental project in low income areas in the City.
- **Fort Smith, AR:** Fort Smith paid a civil penalty of \$300,000, and is required to perform a supplemental environmental project valued at a minimum of \$400,000 to repair and replace leaking private laterals for low-income residential homeowners who qualify for the program. The SEP will help reduce the potential exposure of residents living in low-income portions of the city to raw sewage.
- **Boston Water and Sewer Commission, MA:** BWSC paid a civil penalty of \$235,000 to the United States. BWSC performed a SEP, at a cost of at least \$160,000, to implement a leaking sewer lateral lining program for 25 private sewer laterals within the City of Boston, Massachusetts.

### Environmental Protection and Restoration SEPs

We have commonly included stream habitat restoration/protection SEPs in CWA consent decrees. Here are some recent examples:

- **Gary, IN:** GSD and the City will pay a civil penalty of \$75,000 for its Clean Water Act violations to the United States and the State of Indiana. GSD and the City will spend at least \$175,000 on supplemental environmental projects (SEPs) that involve the removal of invasive plant species (particularly phragmites) and restore native vegetation to stream banks and riparian areas in Northwest Indiana, including on the Grand Calumet River, a waterbody that has been impacted by the overflows from GSD and the City sewer system (specifically at Pine Station Nature Preserve "oxbow" a 19 –acre area of the bank of the Grand Calumet River). These SEPs will deliver environmental benefits including improving habitats, eliminating an unnatural monoculture, preventing shoreline erosion, increasing stormwater retention, benefiting local hydrology, and improving natural filtration of wet weather flows.
- **RIDOT –** The Rhode Island Department of Transportation (RIDOT) agreed to the transfer of proper (and the placement of deed restrictions and covenants) to ensure that the parcels would be maintained in their natural state in perpetuity.
- **Lima, OH:** Lima paid \$49,000 in civil penalties. In addition, Lima committed to perform an Ottawa River stream bank revitalization SEP at an estimated cost of \$218,400. The SEP will improve the condition of the river bank in 20 designated areas by removing dead, diseased, and compromised trees, and planting native grasses, wildflowers, and replacement trees to improve the environmental characteristics of the river bank. The SEP is expected to improve water quality and benefit the aquatic ecosystem in the Ottawa River

In the past, we also commonly included stormwater reduction projects as part of our municipal settlements (such as the construction of rain gardens and other low impact development projects to reduce runoff of contaminated stormwater), but we have moved away from these as "green infrastructure" has become more a part of core injunctive relief.

### **Advance monitoring SEPs**

We have also had recent settlements that included advance monitoring requirements, where the monitoring goes beyond what is required for injunctive relief purposes. Here is an example:

- **NDOT (R9).** The Nevada Department of Transportation, in addition to paying a civil penalty of \$120,000, will develop and implement a SEP valued at \$200,000. The SEP involves advanced water quality monitoring at three locations and posting of real-time monitoring data on a public website.

### **Mitigation Projects**

Generally, we have not included mitigation projects in CWA consent decrees other than as part of the intrinsic injunctive relief in the case (i.e. mitigation to offset fill left in place in 404 cases). We did have one settlement in recent years where a mitigation project was included to offset continuing environmental impacts from wet weather facility dischargers being phased out under the CD:

- **East Bay MUD:** To offset harm from the wet weather facility discharges, which may continue until the final compliance deadline, EBMUD will implement a mitigation project that reduces pollutant loadings to San Francisco Bay until 2035.

Message

---

**From:** Fogarty, Johnpc [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]  
**Sent:** 6/5/2019 2:29:28 PM  
**To:** Makepeace, Caroline [Makepeace.Caroline@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Porter, Amy [Porter.Amy@epa.gov]  
**Subject:** RE: Revised SEP Note to Claire Murray  
**Attachments:** DOJ Guidance on Third Party Payments.pdf

Just for everyone's reference, the DOJ 3rd party payment memo is attached, which states as follows in the paragraph on exceptions to the prohibition: "Third, the policy does not apply to payments expressly authorized by statute..."

---

**From:** Makepeace, Caroline  
**Sent:** Wednesday, June 05, 2019 10:26 AM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** Revised SEP Note to Claire Murray

Revised per Larry's comments. I cleaned up some typos and made one substantive change to the sentence in red below

**Ex. 5 AC/DP**

concerns.

Claire—

**Ex. 5 AC/DP**

# Ex. 5 AC/DP

Please let me know if I can provide any further information.

Susan

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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Message

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**From:** Fogarty, Johnpc [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]  
**Sent:** 6/5/2019 2:20:36 PM  
**To:** Makepeace, Caroline [Makepeace.Caroline@epa.gov]  
**Subject:** RE: v quick q

I did not – rosemarie only

---

**From:** Makepeace, Caroline  
**Sent:** Wednesday, June 05, 2019 10:17 AM  
**To:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** RE: v quick q

Yeah, that'll work.  
BTW, did you look at or revise this yesterday before RK sent to Larry? Or was it RK herself?

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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**From:** Fogarty, Johnpc  
**Sent:** Wednesday, June 05, 2019 10:15 AM  
**To:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Subject:** RE: v quick q

**Ex. 5 AC/DP**

---

**From:** Makepeace, Caroline  
**Sent:** Wednesday, June 05, 2019 10:06 AM  
**To:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** v quick q

I am reworking per Larry's comments, the thank you to Claire Murray. Wondering if this statement is accurate or at

**Ex. 5 AC/DP**

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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Message

---

**From:** Kabler, Lauren [Kabler.Lauren@epa.gov]  
**Sent:** 8/21/2019 4:37:56 PM  
**To:** Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]  
**CC:** Koslow, Karin [Koslow.Karin@epa.gov]; Porter, Amy [Porter.Amy@epa.gov]  
**Subject:** RE: URGENT: OECA AA Region 7 Visit - Respond to Q&A by COB today

I propose a few edits below. Thanks Kristin!

LAUREN V. KABLER  
SPECIAL COUNSEL  
OCE/IO/XPS  
202-564-4052 (DESK)  
202-368-5590 (CELL)

MAY CONTAIN SENSITIVE COMMUNICATION FOR INTERNAL DELIBERATIONS ONLY, ATTORNEY-CLIENT COMMUNICATION, ATTORNEY WORK PRODUCT, AND/OR ENFORCEMENT SENSITIVE INFORMATION. DO NOT DISTRIBUTE OUTSIDE THE U.S. GOVERNMENT.

---

**From:** Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>  
**Sent:** Wednesday, August 21, 2019 12:09 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Cc:** Koslow, Karin <Koslow.Karin@epa.gov>; Kabler, Lauren <Kabler.Lauren@epa.gov>  
**Subject:** RE: URGENT: OECA AA Region 7 Visit - Respond to Q&A by COB today

Here is my proposed response for item two.

## Ex. 5 Deliberative Process (DP)

# Ex. 5 AC/DP

**Kristin Buterbaugh**  
Special Assistant  
OECA - Office of Civil Enforcement  
U.S. Environmental Protection Agency  
WJC South 3119C  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
(202) 564-4479  
[Buterbaugh.Kristin@epa.gov](mailto:Buterbaugh.Kristin@epa.gov)

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**From:** Mirza, Sabah <Mirza.Sabah@epa.gov>

**Sent:** Wednesday, August 21, 2019 10:52 AM

**To:** OECA Office Directors and Deputy Directors <OECA\_Office\_Directors\_and\_Deputy\_Directors@epa.gov>

**Cc:** Johnson, Kathleen <Johnson.Kathleen@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Segall, Martha <Segall.Martha@epa.gov>; VanTil, Barbara <vantil.barbara@epa.gov>; King, Carol <King.Carol@epa.gov>; Vizard, Elizabeth <Vizard.Elizabeth@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>

**Subject:** URGENT: OECA AA Region 7 Visit - Respond to Q&A by COB today

Hi all,

I sincerely apologize for this short notice - we just received some anticipated questions from Region 7 for the Q&A session at the all-hands meeting. We've tagged individuals who we think can help answer these questions for Susan and Larry. **Please reply to me and Cari by COB today.**

1. We could use a little clarity on SEPS and mitigation. Our understanding is that the EPA SEP Policy is unchanged, and that there is no change on use of SEPs in administrative cases. Is that true? On civil judicial cases, can you explain what DOJ's position is on SEPs? And on mitigation? Finally, is any of this written down anywhere?
  - Caroline Makepeace and John Fogarty

## Ex. 5 Deliberative Process (DP)

3. With Newark, lead is back in the national news again. Can you talk about what you see as the role of the enforcement program in attacking childhood blood lead poisoning?
  - Carol King, Liz Vizard, Stephanie Brown
4. We are hearing some concerns from our states about the Drinking Water NCI. We will continue to engage our states at a regional level but can you talk about how OECA plans to collaborate with states on NCI implementation?
  - Mark Pollins, Carol King, Barbara VanTil, Martha Segall
5. The realignment has been a major change in Region 7. What is your perspective on how the realignment is going? What do you see as the biggest benefits of this change moving forward?
  - Kathleen, Rosemarie, David H.

Thanks,  
Sabah

~~~~~  
Sabah Mirza, Special Assistant  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW, 3207E WJC South  
Washington, DC 20460

Office: 202-564-8176

Message

---

**From:** Koslow, Karin [Koslow.Karin@epa.gov]  
**Sent:** 8/9/2019 2:37:24 PM  
**To:** OECA-OCE-MANAGERS [OECAOCEMANAGERS@epa.gov]  
**CC:** Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]  
**Subject:** FW: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

FYI below.

Thanks,  
Karin

Karin Koslow  
Deputy Director, Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Desk: (202) 564-0171  
Cell: (202) 716-5645  
WJC South Room 3142D

---

**From:** Starfield, Lawrence <Starfield.Lawrence@epa.gov>  
**Sent:** Friday, August 09, 2019 10:16 AM  
**To:** Regional Counsels and Deputies <Regional\_Counsels\_and\_Deputies@epa.gov>; ECAD Directors and Deputies <ECAD\_Directors\_and\_Deputies@epa.gov>  
**Cc:** Koslow, Karin <Koslow.Karin@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** FW: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

RC and ECAD colleagues:

I wanted to make you aware of this story on SEPs from InsideEPA, as you may get similar inquiries from outside parties or the press. FYI, our response to InsideEPA was the following:

EPA has not changed its 2015 policy regarding supplemental environmental projects (SEPs) in settlement agreements. A SEP is a beneficial environmental project or activity to which a party agrees that goes beyond what could legally be required in order for the party to return to compliance. On November 7, 2018, former Attorney General Jeff Sessions issued a Department of Justice (DOJ) policy entitled *Principles and Procedures for Civil Consent Decrees and Settlement Agreements with State and Local Governmental Entities* – see <https://www.justice.gov/opa/pr/justice-department-releases-memorandum-litigation-guidelines-civil-consent-decrees-and>. As a policy matter, DOJ requires that judicial settlements with a state or local entity that include SEPs must first be reviewed and approved by the Associate Attorney General.

Larry

## **DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy**

August 08, 2019

AUSTIN, TX -- The Department of Justice (DOJ) is rejecting supplemental environmental projects (SEPs) in settlements it is negotiating with local governmental agencies, a move that appears to undercut department policy that says it will approve the projects as part of deals provided they comply with EPA's SEP policy, attorneys say.

The rejections have begun being communicated over the past month, according to one industry attorney familiar with negotiations in several clean water settlements between DOJ and local governments, coming after years of negotiations where DOJ officials indicated the projects were likely to be approved.

A second source, industry attorney Nathan Vassar, told an Aug. 1 session of the Texas Environmental Superconference here that if attorneys have a SEP to propose as part of a federal settlement, "it will take some real convincing because apparently the ongoing discussions -- and this is more at DOJ than it is at EPA -- are that, 'We're not going to allow SEPs as part of the enforcement protocol.'"

Vassar said this marks a change from past practice, when Trump officials told attorneys representing municipalities that their broader efforts to limit the use of SEPs would not generally apply in settlements involving local government entities. "We were told on several occasions, 'On municipal enforcement, if you like your SEP, you can keep your SEP'," he said.

However, that is no longer the case, Vassar said. "We learned just this week, it may be news to some . . . A SEP as a part of an enforcement mechanism is not going to be pursued as a part of this administration."

A DOJ spokesman denies there has been a policy change, saying all department guidance is being followed and declining to comment on whether new guidance has been issued.

DOJ's "Environment and Natural Resources Division [(ENRD)] is following all current [DOJ] memoranda, including those issued by the Division itself and by the Attorney General," the spokesman says.

The spokesman declined to clarify whether that means SEPs can be approved or if there is a new document prohibiting them.

An EPA spokesman says the agency has not changed its 2015 policy regarding use of SEPs in settlement agreements. But the spokesman noted that former Attorney General Jeff Sessions, in a 2018 policy, had required that "judicial settlements with a state or local entity that include SEPs must first be reviewed and approved by the Associate Attorney General."

The new prohibition on SEPs renews focus on the issue, which has raised concerns in the past. The concern stemmed initially from Sessions' [June 2017 memo](#) banning settlements that included payments to third parties. Sessions opposed such payments because the parties were "neither victims nor parties to the lawsuits."

Some GOP lawmakers also complained that such settlements amount to “sweetheart deals” for environmental groups that benefitted from SEPs.

But many attorneys warned at the time that the prohibition would drastically impair their ability to settle EPA-related cases, and they strongly defended SEPs as providing a major incentive for environmental settlements with local both governments and private industry.

For example, some municipal officials were concerned that any limitation on the use of SEPs would hamper their efforts to expand the use of SEPs to offset stipulated penalties.

## **EPA Policy**

After the uproar, DOJ's then-acting ENRD chief Jeff Woods in a January 2018 memo clarified exceptions to the payment ban, including for projects that comply with EPA's 2015 SEP policy.

Then, Sessions in a November 2018 policy wrote that settlements with municipal entities that included SEPs had to win approval from the associate attorney general for ENRD.

While the policy barring payments to third parties has been implemented, it faces some legal uncertainty as a federal court in Washington, D.C., has so far declined a DOJ request to drop a SEP from an already approved settlement with Harley Davidson -- more than two years after the request was first made.

Now, industry sources say DOJ is now rejecting approvals of municipal SEPs, raising questions about how to proceed.

“What we are starting to see happen is where we proposed SEPs we thought would be OK, and that everyone indicated were OK, but of course did not have final approval, are now getting rejected,” the first industry source says.

DOJ is communicating to these attorneys that the settlements will not be approved if they contain the SEPs, but the source says it is unclear who made the change and why. No one at DOJ “has cited new documents to us,” the source says.

It is also unclear whether any of the settling parties will seek to challenge the rejection of the SEPs. “We have to debate, ‘Ok do you challenge it and go to higher levels to try to convince [DOJ] why you should be able to do this, or do you just say, ‘OK, we’re going to put more money in the penalty?’”

These discussions are “just happening now . . . we are engaged in thinking about that right now.” The answer will be based on how badly the settling party wants to do the SEP “or whether it can get the case done, pay more money and move on,” the source adds. “We have to think about each case and whether it is worth having that fight.”

This source has “not had any direct discussions with someone at DOJ or EPA other than being told they are not accepting that SEP.”

The attorney notes that including SEPs in local government settlements has “been very valuable” and “helped us get to agreements in situations where municipalities feel very strongly that if they pay money it should go toward the community, and hopefully go to improving water quality for the community, and not get sent to D.C. to go to some federal agency.”

City councils are more apt to approve settlements if they include incentives such as SEPs that require tree planting or repairing a sewer line, the source explains. However, it is also unclear, the source notes, whether dropping a SEP at this stage will tank the overarching settlement and result in litigation.

The industry source says when the policies first came out, it appeared they would not restrict SEPs by municipalities unless the governments were paying contractors to do the work, rather than having their own employees do so.

Now, the source says, even if a city employee were to plant trees on private property as part of a SEP, that appears to be prohibited as well, because DOJ "would say you are providing value to that property owner, and that is something you cannot do."

The source adds that if all SEPs are effectively banned, that would "be really unfortunate" because "they helped make it easier to reach agreements and provided real environmental benefits to communities."

The source says it is difficult to identify the universe of threatened SEPs because the Trump DOJ has not initiated many cases, so a lot of the cases being negotiated were started under the Obama administration, continued into Trump "and now we're being told we can't do it."

The source says the policy is less problematic if "it is only the policy for the next year and a half." But if it "lasts into another administration," then it would "affect a lot of cases" and have a "substantial" impact on settlements.

The last case this source was involved with that had a SEP -- which required a city to improve a stream -- was approved by a court in early 2018. -- *Dawn Reeves* ([dreeves@iwpnews.com](mailto:dreeves@iwpnews.com)) & *Lee Logan* ([llogan@iwpnews.com](mailto:llogan@iwpnews.com))

Related News | [Litigation](#) | [Transition 2016-2017](#) |

220946



Message

---

**From:** Porter, Amy [Porter.Amy@epa.gov]  
**Sent:** 7/17/2019 9:20:27 PM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]  
**Subject:** FW: Draft email to Claire Murray re SEPs

Resending the last email that was worked on but never sent – re whether it might be useful for the next communication. (I'll be re-reading it concurrently but wanted to get it to you all asap.)

---

**From:** Porter, Amy  
**Sent:** Wednesday, June 05, 2019 3:00 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>  
**Cc:** Rosemarie Kelley (Kelley.Rosemarie@epa.gov) <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Johnpc Fogarty <Fogarty.Johnpc@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Subject:** Draft email to Claire Murray re SEPs

Susan – Please see draft email below for you to send to Claire Murray as discussed. Please let us know if you have any questions.

Thanks,  
Amy

Claire—

**Ex. 5 AC/DP**

# Ex. 5 AC/DP

Please let me know if I can provide any further information.

Susan

Message

---

**From:** Denton, Loren [Denton.Loren@epa.gov]  
**Sent:** 6/14/2019 1:27:38 AM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]  
**Subject:** Re: Ex. 7(A) Sep

I agree. Thanks.

Sent from my iPhone

On Jun 13, 2019, at 8:27 PM, Kelley, Rosemarie <Kelley.Rosemarie@epa.gov> wrote:

Frankly, I am not sure the outcome will be any different.

Rosemarie

On Jun 13, 2019, at 6:40 PM, Denton, Loren <Denton.Loren@epa.gov> wrote:

Rosemarie,

**Ex. 5 AC/AWP/DP, Ex. 7(a)**

Sorry for the confusion I likely created on this one.

Loren

Loren Denton, Chief  
Municipal Branch  
Water Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. EPA (2243A)  
Washington, D.C. 20460  
Phone: (202) 564-1148

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---

**From:** Makepeace, Caroline  
**Sent:** Thursday, June 13, 2019 5:47 PM  
**To:** Denton, Loren <Denton.Loren@epa.gov>  
**Cc:** Rae, Sarah <Rae.Sarah@epa.gov>; Zimny, James <zimny.james@epa.gov>  
**Subject:** RE: Ex. 7(A) Sep

## Ex. 5 AC/AWP/DP, Ex. 7(a)

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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**From:** Denton, Loren  
**Sent:** Thursday, June 13, 2019 5:40 PM  
**To:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Cc:** Rae, Sarah <Rae.Sarah@epa.gov>; Zimny, James <zimny.james@epa.gov>  
**Subject:** RE: Ex. 7(A) Sep

## Ex. 5 AC/AWP/DP, Ex. 7(a)

Loren Denton, Chief  
Municipal Branch  
Water Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. EPA (2243A)  
Washington, D.C. 20460  
Phone: (202) 564-1148

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**From:** Makepeace, Caroline  
**Sent:** Thursday, June 13, 2019 5:29 PM  
**To:** Denton, Loren <Denton.Loren@epa.gov>  
**Cc:** Rae, Sarah <Rae.Sarah@epa.gov>; Zimny, James <zimny.james@epa.gov>  
**Subject:** RE: Ex. 7(A) Sep

## Ex. 5 AC/AWP/DP, Ex. 7(a)

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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---

**From:** Denton, Loren  
**Sent:** Thursday, June 13, 2019 5:28 PM  
**To:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Cc:** Rae, Sarah <Rae.Sarah@epa.gov>; Zimny, James <zimny.james@epa.gov>  
**Subject:** RE: Ex. 7(A) Sep

## Ex. 5 AC/AWP/DP, Ex. 7(a)

Loren Denton, Chief  
Municipal Branch  
Water Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. EPA (2243A)  
Washington, D.C. 20460  
Phone: (202) 564-1148

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---

**From:** Makepeace, Caroline  
**Sent:** Thursday, June 13, 2019 5:25 PM  
**To:** Denton, Loren <Denton.Loren@epa.gov>  
**Cc:** Rae, Sarah <Rae.Sarah@epa.gov>; Zimny, James <zimny.james@epa.gov>  
**Subject:** RE: Ex. 7(A) Sep

## Ex. 5 AC/AWP/DP, Ex. 7(a)

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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---

**From:** Denton, Loren  
**Sent:** Thursday, June 13, 2019 5:17 PM  
**To:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Cc:** Rae, Sarah <Rae.Sarah@epa.gov>; Zimny, James <zimny.james@epa.gov>  
**Subject:** Ex. 7(A) Sep

Caroline:

# **Ex. 5 AC/AWP/DP, Ex. 7(a)**

Loren

Loren Denton, Chief  
Municipal Branch  
Water Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. EPA (2243A)  
Washington, D.C. 20460  
Phone: (202) 564-1148

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Message

---

**From:** Koslow, Karin [Koslow.Karin@epa.gov]  
**Sent:** 5/21/2019 4:58:03 PM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]  
**Subject:** My comments for your consideration - FW: FOR REVIEW - Draft email to send to Susan B re Prep for DOJ on SEPs and muni issues  
**Attachments:** Draft Email for Susan Bodine re Prep for DOJ on SEPs and Munis.docx

I think you should review, but thought I'd share my reactions –

## Ex. 5 Deliberative Process (DP)

Thanks,  
Karin

Karin Koslow  
Deputy Director, Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
(202) 564-0171  
WJC South Room 3142D

---

**From:** Makepeace, Caroline  
**Sent:** Tuesday, May 21, 2019 12:46 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Cc:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>  
**Subject:** FOR REVIEW - Draft email to send to Susan B re Prep for DOJ on SEPs and muni issues

RK –

## Ex. 5 AC/DP

Let us know if you have edits, concerns, etc.

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement

US Environmental Protection Agency  
202-564-6012

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Message

---

**From:** Porter, Amy [Porter.Amy@epa.gov]  
**Sent:** 4/15/2019 3:36:45 AM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]  
**CC:** Pollins, Mark [Pollins.Mark@epa.gov]  
**Subject:** Re: Does this summarize Susan's request for SEP briefing prep?

Thank you, Rosemarie. I'll send this Monday morning.

Sent from my iPhone

On Apr 14, 2019, at 2:22 PM, Kelley, Rosemarie <Kelley.Rosemarie@epa.gov> wrote:

Caroline –

**Ex. 5 AC/DP**

*Rosemarie – Is there anything else you would add for guidance for developing materials for Susan?*

No, I think the rest of this note covers it.

Rosemarie

---

**From:** Porter, Amy  
**Sent:** Friday, April 12, 2019 4:48:56 PM  
**To:** Kelley, Rosemarie  
**Cc:** Pollins, Mark  
**Subject:** Does this summarize Susan's request for SEP briefing prep?

Rosemarie – I want to send this to Caroline, and cc John, Mark (acting for you next week and has a "to do" item below) and Susan O'Keefe (who will be acting for me next week) and Apple who will be acting next Friday. Can you please let me know if you think this captures everything?  
Thx

Caroline –

**Ex. 5 AC/DP**

*Rosemarie – Is there anything else you would add for guidance for developing materials for Susan?*

Amy Porter, Director  
Crosscutting Policy Staff  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-2431

Message

---

**From:** Theis, Joseph [Theis.Joseph@epa.gov]  
**Sent:** 4/4/2019 5:15:39 PM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Pollins, Mark [Pollins.Mark@epa.gov]  
**Subject:** Ex. 7(A)

Got it.

Joseph G. Theis  
Associate Director  
Water Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. EPA (2243A)  
1200 Pennsylvania Ave, NW  
Washington, D.C. 20460  
(202)564-4053

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---

**From:** Kelley, Rosemarie  
**Sent:** Thursday, April 04, 2019 1:13 PM  
**To:** Pollins, Mark <Pollins.Mark@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>  
**Subject:** Ex. 7(A)

Please do not forward Larry's email. Thanks.

Rosemarie

---

**From:** Kelley, Rosemarie  
**Sent:** Thursday, April 04, 2019 1:12 PM  
**To:** Pollins, Mark <Pollins.Mark@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>  
**Subject:** Ex. 7(A)

Mark, Joe—

Please see Larry's note to Susan below.

Rosemarie

---

**From:** Starfield, Lawrence  
**Sent:** Wednesday, April 03, 2019 7:01 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** Ex. 7(A)

FYI.

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---

**From:** Starfield, Lawrence

**Sent:** Wednesday, April 03, 2019 7:01 PM

**To:** Susan Bodine ([bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)) <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>

**Subject:** **Ex. 7(A)**

Susan,

# **Ex. 5 AC/AWP/DP, Ex. 7(a)**

Larry

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Thank you.

Message

---

**From:** Porter, Amy [Porter.Amy@epa.gov]  
**Sent:** 6/5/2019 6:53:16 PM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]  
**Subject:** RE: Revised SEP Note to Claire Murray -- as of 2:23

LOL!

---

**From:** Kelley, Rosemarie  
**Sent:** Wednesday, June 05, 2019 2:53 PM  
**To:** Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** RE: Revised SEP Note to Claire Murray -- as of 2:23

Thanks. I'm in a meeting with them right now so it would be awkward for me to send now.

Rosemarie

---

**From:** Porter, Amy  
**Sent:** Wednesday, June 05, 2019 2:51 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** RE: Revised SEP Note to Claire Murray -- as of 2:23

Will do.

---

**From:** Kelley, Rosemarie  
**Sent:** Wednesday, June 05, 2019 2:49 PM  
**To:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** RE: Revised SEP Note to Claire Murray -- as of 2:23

I made one small change below. Otherwise it looks good.

Amy – could you send this email to Susan and Larry? Thanks.

Rosemarie

---

**From:** Makepeace, Caroline  
**Sent:** Wednesday, June 05, 2019 2:34 PM  
**To:** Porter, Amy <Porter.Amy@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** RE: Revised SEP Note to Claire Murray -- as of 2:23

Please see proposed edits below, in red. I think the following addresses your concern, Rosemarie, if it was about what

## Ex. 5 AC/DP

Claire—

# Ex. 5 AC/DP

Again, my thanks for the recent meeting and thoughtful discussion of this important issue. I hope that we may hear from your soon so that we can move our judicial cases forward and address environmental violations in a timely manner.

Please let me know if I can provide any further information.

Susan

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement

US Environmental Protection Agency  
202-564-6012

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---

**From:** Porter, Amy  
**Sent:** Wednesday, June 05, 2019 12:50 PM  
**To:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** RE: Revised SEP Note to Claire Murray

Rosemarie – I just saw your email

**Ex. 5 AC/DP**

Can you please be more specific?

Thanks  
Amy

---

**From:** Makepeace, Caroline  
**Sent:** Wednesday, June 05, 2019 10:26 AM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** Revised SEP Note to Claire Murray

Revised per Larry's comments. I cleaned up some typos and made one substantive change to the sentence in red below

**Ex. 5 AC/DP**

Claire—

**Ex. 5 AC/DP**

# Ex. 5 AC/DP

Please let me know if I can provide any further information.

Susan

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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Message

---

**From:** Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]  
**Sent:** 6/5/2019 4:58:08 PM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]  
**Subject:** Tentative Agenda for June OCE All Hands

1. New hires and interns/law clerks
2. Trainings
3. Reminder to run EJscreen; importance
4. Diversity and Inclusion
5. SEP update
6. DOJ/EPA MOU
7. Budget
8. Ethics
9. Case

**Ex. 7(A)**

**Kristin Buterbaugh**

Special Assistant  
OECA - Office of Civil Enforcement  
U.S. Environmental Protection Agency  
WJC South 3119C  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
(202) 564-4479  
[Buterbaugh.Kristin@epa.gov](mailto:Buterbaugh.Kristin@epa.gov)

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Message

---

**From:** Porter, Amy [Porter.Amy@epa.gov]  
**Sent:** 4/1/2019 8:02:19 PM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]  
**Subject:** RE: Has OLC ever opined on SEP policy?

OK I'll follow up. Caroline is not answering. (she is on AL)

---

**From:** Kelley, Rosemarie  
**Sent:** Monday, April 01, 2019 4:01 PM  
**To:** Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** RE: Has OLC ever opined on SEP policy?

No, but this is not a rush. The conversation has moved on.

---

**From:** Porter, Amy  
**Sent:** Monday, April 01, 2019 4:01 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** RE: Has OLC ever opined on SEP policy?

Or is he with you?

---

**From:** Kelley, Rosemarie  
**Sent:** Monday, April 01, 2019 3:59 PM  
**To:** Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** RE: Has OLC ever opined on SEP policy?

On DOJ call now. SEPs are an issue for Jeff Clark.

---

**From:** Porter, Amy  
**Sent:** Monday, April 01, 2019 3:58 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** RE: Has OLC ever opined on SEP policy?

I don't know but will check with Caroline.

---

**From:** Kelley, Rosemarie  
**Sent:** Monday, April 01, 2019 3:51 PM  
**To:** Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** Has OLC ever opined on SEP policy?

Regards,  
Rosemarie A. Kelley, Director  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
202-564-4014

Message

---

**From:** Porter, Amy [Porter.Amy@epa.gov]  
**Sent:** 4/1/2019 8:00:10 PM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]  
**Subject:** RE: Has OLC ever opined on SEP policy?

Oh shoot, Caroline is out. Calling Fog

---

**From:** Kelley, Rosemarie  
**Sent:** Monday, April 01, 2019 3:59 PM  
**To:** Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** RE: Has OLC ever opined on SEP policy?

On DOJ call now. SEPs are an issue for Jeff Clark.

---

**From:** Porter, Amy  
**Sent:** Monday, April 01, 2019 3:58 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** RE: Has OLC ever opined on SEP policy?

I don't know but will check with Caroline.

---

**From:** Kelley, Rosemarie  
**Sent:** Monday, April 01, 2019 3:51 PM  
**To:** Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** Has OLC ever opined on SEP policy?

Regards,  
Rosemarie A. Kelley, Director  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
202-564-4014

Message

---

**From:** Porter, Amy [Porter.Amy@epa.gov]  
**Sent:** 4/1/2019 7:59:39 PM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]  
**Subject:** RE: Has OLC ever opined on SEP policy?

Calling Caroline now

---

**From:** Kelley, Rosemarie  
**Sent:** Monday, April 01, 2019 3:59 PM  
**To:** Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** RE: Has OLC ever opined on SEP policy?

On DOJ call now. SEPs are an issue for Jeff Clark.

---

**From:** Porter, Amy  
**Sent:** Monday, April 01, 2019 3:58 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** RE: Has OLC ever opined on SEP policy?

I don't know but will check with Caroline.

---

**From:** Kelley, Rosemarie  
**Sent:** Monday, April 01, 2019 3:51 PM  
**To:** Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** Has OLC ever opined on SEP policy?

Regards,  
Rosemarie A. Kelley, Director  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
202-564-4014

Message

---

**From:** Koslow, Karin [Koslow.Karin@epa.gov]  
**Sent:** 9/9/2019 5:45:04 PM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]  
**Subject:** My comments in redline - FW: Wheeler Fact Sheet on SEPs  
**Attachments:** OECA SEPs in Muni Cases Fact Sheet.v2.docx

**Importance:** High

I've included my comments in redline, but you may not agree, so sending to you to expedite getting this back to Caroline & John.

I also note that Susan asked for a fact sheet on DOJ's policy – that's not what this is. I wonder if we also need to develop a true "fact sheet" that summarizes the key relevant elements of the policy, as background for the Administrator.

-Karin

Karin Koslow  
Deputy Director, Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Desk: (202) 564-0171  
Cell: (202) 716-5645  
WJC South Room 3142D

---

**From:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Sent:** Monday, September 09, 2019 12:52 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>  
**Cc:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** Wheeler Fact Sheet on SEPs

Please see attached draft. John has already reviewed and made helpful comments (Thx!)

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

Message

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**From:** Conway, Timothy [Conway.Tim@epa.gov]  
**Sent:** 8/28/2019 1:49:02 AM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]  
**Subject:** Re: DOJ just issued a new memo on Using Supplemental Environmental Projects ("SEPs") in Settlements with State and Local Governments

Thanks— tough situation

Sent from my iPhone

On Aug 27, 2019, at 7:51 PM, Kelley, Rosemarie <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)> wrote:

All --

Here is the desk statement we developed to respond to questions about DOJ's new policy on SEPs:

Questions regarding DOJ's 8/21/19 policy on supplemental environmental projects (SEPs) should be directed to DOJ's Office of Public Affairs. A SEP is a voluntary beneficial environmental project that goes beyond compliance requirements and that is taken into consideration by the government when setting an appropriate penalty amount. EPA has not changed its 2015 policy regarding SEPs in settlement agreements and will continue to support SEPs in administrative cases.

The OECA communications director will share it with your PADs but I want to make sure you have it as well.

Rosemarie Kelley, Director  
Office of Civil Enforcement  
OECA

---

**From:** Kelley, Rosemarie  
**Sent:** Wednesday, August 21, 2019 1:54 PM  
**To:** Regional Counsels and Deputies <[Regional\\_Counsels\\_and\\_Deputies@epa.gov](mailto:Regional_Counsels_and_Deputies@epa.gov)>; OECA-OCE-MANAGERS <[OECAOCEMANAGERS@epa.gov](mailto:OECAOCEMANAGERS@epa.gov)>; Makepeace, Caroline <[Makepeace.Caroline@epa.gov](mailto:Makepeace.Caroline@epa.gov)>; ECAD Directors and Deputies <[ECAD\\_Directors\\_and\\_Deputies@epa.gov](mailto:ECAD_Directors_and_Deputies@epa.gov)>; OECA Office Directors and Deputy Directors <[OECA\\_Office\\_Directors\\_and\\_Deputy\\_Directors@epa.gov](mailto:OECA_Office_Directors_and_Deputy_Directors@epa.gov)>; Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>; Susan Bodine ([bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)) <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>  
**Cc:** Buterbaugh, Kristin <[Buterbaugh.Kristin@epa.gov](mailto:Buterbaugh.Kristin@epa.gov)>; Shiffman, Cari <[Shiffman.Cari@epa.gov](mailto:Shiffman.Cari@epa.gov)>; Mirza, Sabah <[Mirza.Sabah@epa.gov](mailto:Mirza.Sabah@epa.gov)>  
**Subject:** RE: DOJ just issued a new memo on Using Supplemental Environmental Projects ("SEPs") in Settlements with State and Local Governments

I apologize for not including the link. Here it is:

<https://www.justice.gov/enrd/page/file/1197056/download>

---

**From:** Kelley, Rosemarie

**Sent:** Wednesday, August 21, 2019 1:26 PM

**To:** Regional Counsels and Deputies <[Regional\\_Counsels\\_and\\_Deputies@epa.gov](mailto:Regional_Counsels_and_Deputies@epa.gov)>; OECA-OCE-MANAGERS <[OECAOCEMANAGERS@epa.gov](mailto:OECAOCEMANAGERS@epa.gov)>; Makepeace, Caroline <[Makepeace.Caroline@epa.gov](mailto:Makepeace.Caroline@epa.gov)>; ECAD Directors and Deputies <[ECAD\\_Directors\\_and\\_Deputies@epa.gov](mailto:ECAD_Directors_and_Deputies@epa.gov)>; OECA Office Directors and Deputy Directors <[OECA\\_Office\\_Directors\\_and\\_Deputy\\_Directors@epa.gov](mailto:OECA_Office_Directors_and_Deputy_Directors@epa.gov)>; Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>; Susan Bodine ([bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)) <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>

**Cc:** Buterbaugh, Kristin <[Buterbaugh.Kristin@epa.gov](mailto:Buterbaugh.Kristin@epa.gov)>

**Subject:** DOJ just issued a new memo on Using Supplemental Environmental Projects ("SEPs") in Settlements with State and Local Governments

All—

I want to let you know that DOJ just issued a memo on Using Supplemental Environmental Projects ("SEPs") in Settlements with State and Local Governments minutes ago.

More to come on next steps, but I thought you should know about this memo.

Rosemarie

Regards,

Rosemarie A. Kelley, Director

Office of Civil Enforcement

Office of Enforcement and Compliance Assurance

202-564-4014





Message

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**From:** Kelley, Rosemarie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23B7C900323047FCA012DF62C58C4D22-RKELLEY]  
**Sent:** 8/19/2019 11:33:50 PM  
**To:** Koslow, Karin [Koslow.Karin@epa.gov]  
**Subject:** Re: SEPs

I don't think if that makes sense to discuss with WED. I think we should invite Caroline to join us for the weekly with Larry tomorrow at 11.

Rosemarie

On Aug 19, 2019, at 7:25 PM, Koslow, Karin <Koslow.Karin@epa.gov> wrote:

Should I ask Caroline to come to WED General tomorrow so we can discuss..?

Karin Koslow  
Deputy Director, Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
202-564-0171

Begin forwarded message:

**From:** "Makepeace, Caroline" <Makepeace.Caroline@epa.gov>  
**Date:** August 19, 2019 at 4:25:06 PM EDT  
**To:** "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>  
**Cc:** "Fogarty, Johnpc" <Fogarty.Johnpc@epa.gov>, "Buterbaugh, Kristin" <Buterbaugh.Kristin@epa.gov>, "Koslow, Karin" <Koslow.Karin@epa.gov>  
**Subject:** Re: SEPs

**Ex. 5 AC/DP**

Sent from my iPhone

On Aug 19, 2019, at 3:36 PM, Kelley, Rosemarie <Kelley.Rosemarie@epa.gov> wrote:

**Ex. 5 AC/DP**

Rosemarie

**From:** Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>  
**Sent:** Monday, August 19, 2019 3:31 PM  
**To:** Kelley, Rosemarie <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)>; Koslow, Karin  
<[Koslow.Karin@epa.gov](mailto:Koslow.Karin@epa.gov)>  
**Subject:** SEPs

Rosemarie/Karin,

**Ex. 5 AC/DP**

To discuss.

Larry

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

Message

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**From:** Kelley, Rosemarie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23B7C900323047FCA012DF62C58C4D22-RKELLEY]  
**Sent:** 7/8/2019 2:10:59 PM  
**To:** Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]  
**Subject:** Fw: **Ex. 5 AC/DP**

Rosemarie Kelley, Director  
Office of Civil Enforcement  
OECA

---

**From:** Fried, Gregory  
**Sent:** Wednesday, July 3, 2019 2:35 PM  
**To:** Kelley, Rosemarie  
**Cc:** Brooks, Phillip; Chapman, Apple; Koslow, Karin; Buterbaugh, Kristin  
**Subject:** Re: **Ex. 5 AC/DP**

**Ex. 5 AC/AWP**

Sent from my iPhone

On Jul 3, 2019, at 1:52 PM, Kelley, Rosemarie <Kelley.Rosemarie@epa.gov> wrote:

Greg –

**Ex. 5 AC/AWP**

Rosemarie

---

**From:** Palmer, Leif  
**Sent:** Wednesday, July 03, 2019 11:10 AM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Cc:** Koslow, Karin <Koslow.Karin@epa.gov>; R4ORC.SPECIALASSISTANT <R4ORC.SPECIALASSISTANT@epa.gov>  
**Subject:** RE: **Ex. 5 AC/DP**

Rosemarie & Karin

**Ex. 5 AC/AWP**

# Ex. 5 AC/AWP

If you have any questions please cc: Matt Hicks (special assistant) in any emails to me.

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**From:** Kelley, Rosemarie  
**Sent:** Monday, July 1, 2019 3:24 PM  
**To:** Regional Counsels and Deputies <[Regional\\_Counsels\\_and\\_Deputies@epa.gov](mailto:Regional_Counsels_and_Deputies@epa.gov)>  
**Cc:** Koslow, Karin <[Koslow.Karin@epa.gov](mailto:Koslow.Karin@epa.gov)>  
**Subject:** **Ex. 5 AC/DP**

Regional Counsels,

Happy July 1! Given that it is the beginning of the 4<sup>th</sup> quarter of FY19, Karin and I would

## Ex. 5 AC/DP

Rosemarie

Regards,  
Rosemarie A. Kelley, Director  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
202-564-4014

Message

**From:** Kelley, Rosemarie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23B7C900323047FCA012DF62C58C4D22-RKELLEY]  
**Sent:** 7/2/2019 8:52:37 PM  
**To:** Makepeace, Caroline [Makepeace.Caroline@epa.gov]  
**Subject:** FW: SEPs in **Ex. 7(A)**

FYI

---

**From:** Schaaf, Eric  
**Sent:** Tuesday, July 02, 2019 4:22 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Simon, Paul <Simon.Paul@epa.gov>  
**Cc:** Feinmark, Phyllis <Feinmark.Phyllis@epa.gov>; Shapiro, Naomi <Shapiro.Naomi@epa.gov>; Sawyer, William <Sawyer.William@epa.gov>  
**Subject:** RE: SEPs in **Ex. 7(A)** case

Rosemarie – Thanks for the follow-up. We'll move ahead with **Ex. 7(A)** and await further feedback on **Ex. 7(A)**

---

**From:** Kelley, Rosemarie  
**Sent:** Tuesday, July 2, 2019 3:52 PM  
**To:** Schaaf, Eric <Schaaf.Eric@epa.gov>; Simon, Paul <Simon.Paul@epa.gov>  
**Subject:** FW: SEPs in **Ex. 7(A)** case

Eric, Paul—

**Ex. 5 AC/AWP/DP, Ex. 7(a)**

Rosemarie

---

**From:** Bodine, Susan  
**Sent:** Monday, July 01, 2019 1:25 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Cc:** Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>  
**Subject:** RE: SEPs in **Ex. 7(A)** case

Okay with moving ahead this way.

Thanks,

Susa

**From:** Kelley, Rosemarie  
**Sent:** Monday, July 1, 2019 1:05 PM  
**To:** Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>  
**Cc:** Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>; Traylor, Patrick <[traylor.patrick@epa.gov](mailto:traylor.patrick@epa.gov)>; Koslow, Karin <[Koslow.Karin@epa.gov](mailto:Koslow.Karin@epa.gov)>; Buterbaugh, Kristin <[Buterbaugh.Kristin@epa.gov](mailto:Buterbaugh.Kristin@epa.gov)>; Porter, Amy <[Porter.Amy@epa.gov](mailto:Porter.Amy@epa.gov)>; Makepeace, Caroline <[Makepeace.Caroline@epa.gov](mailto:Makepeace.Caroline@epa.gov)>; Fogarty, Johnpc <[Fogarty.Johnpc@epa.gov](mailto:Fogarty.Johnpc@epa.gov)>; Pollins, Mark <[Pollins.Mark@epa.gov](mailto:Pollins.Mark@epa.gov)>; Theis, Joseph <[Theis.Joseph@epa.gov](mailto:Theis.Joseph@epa.gov)>  
**Subject:** SEPs in **Ex. 7(A)** case

Susan—

# Ex. 5 AC/AWP/DP, Ex. 7(a)

Rosemarie

Regards,  
Rosemarie A. Kelley, Director  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
202-564-4014

Message

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**From:** Kelley, Rosemarie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23B7C900323047FCA012DF62C58C4D22-RKELLEY]  
**Sent:** 5/7/2019 2:55:48 PM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]  
**Subject:** Larry

Larry,

**Ex. 5 Deliberative Process (DP)**

Rosemarie

Message

---

**From:** Kelley, Rosemarie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23B7C900323047FCA012DF62C58C4D22-RKELLEY]  
**Sent:** 5/1/2019 8:23:34 PM  
**To:** Makepeace, Caroline [Makepeace.Caroline@epa.gov]  
**Subject:** FW: SEP talking points  
**Attachments:** Possible Talking Points for meeting with Jesse Pannuccio 4 29 19 revised.docx

Caroline-

You should definitely borrow from these TPs.

Rosemarie

---

**From:** Starfield, Lawrence  
**Sent:** Monday, April 29, 2019 2:03 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>  
**Cc:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>  
**Subject:** SEP talking points

Susan,

OCE had a number of good revisions to the draft talking points on SEPs. The revised memo is attached.

Larry



Message

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**From:** Kelley, Rosemarie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23B7C900323047FCA012DF62C58C4D22-RKELLEY]  
**Sent:** 4/15/2019 11:04:45 PM  
**To:** Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]; Pollins, Mark [Pollins.Mark@epa.gov]  
**Subject:** FW: Materials for discussion with DOJ on SEPs  
**Attachments:** FINAL 2015 UPDATE TO SEP POLICY.pdf; sep annual results graph.pdf; LPS-#268841-v1-TPP\_Briefing\_Paper\_041519\_External (002).DOCX; LPS-#268842-v1-SEPs\_Briefing\_Paper\_041519\_External (002).DOCX

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**From:** Fogarty, Johnpc  
**Sent:** Monday, April 15, 2019 4:56 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>  
**Cc:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** Materials for discussion with DOJ on SEPs

Susan and Larry –

Attached are several materials in advance of the meeting with DOJ on Friday on SEPs.

First are two briefing papers (on SEPs and third-party payments), that were prepared by DOJ. These were just shared with us and we have not yet had a chance to review.

Second, also attached is a chart showing SEP annual results for the past ten years, and a copy of the current and consolidated SEP Policy (the “2015 Update”). We are also pulling together a variety of recent examples of SEPs which we will forward Wednesday, in advance of briefing you on all of this at the OCE general Thursday.

# Ex. 5 AC/DP

Please let us know if you have any questions or would like other materials.

## Appointment

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**From:** Koslow, Karin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D00AA4F4FEAD4A3FA02F0CAFE57ED221-KOSLOW, KARIN]  
**Sent:** 7/17/2019 6:35:38 PM  
**To:** Koslow, Karin [Koslow.Karin@epa.gov]; Amy Porter (Porter.Amy@epa.gov) [Porter.Amy@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]  
**Subject:** Quick strategy discussion re: recommendation for next steps vis a vis DOJ Draft SEP memo  
**Location:** Rosemarie's office  
**Start:** 7/17/2019 8:00:00 PM  
**End:** 7/17/2019 8:30:00 PM  
**Show Time As:** Busy

Hoping we can get together this afternoon to talk about options we want to present to Susan and Larry tomorrow re: a response to the draft memo. We won't have a substantive focused discussion re: the content of the memo, but rather want to talk about process - in terms of the form and scope of our response.

If this time doesn't work, we could try for 9 a.m. tomorrow (Thursday).

Thanks,  
Karin

Message

---

**From:** Makepeace, Caroline [Makepeace.Caroline@epa.gov]  
**Sent:** 9/10/2019 3:17:37 PM  
**To:** Koslow, Karin [Koslow.Karin@epa.gov]  
**CC:** Porter, Amy [Porter.Amy@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]  
**Subject:** RE: Wheeler Fact Sheet on SEPs  
**Attachments:** OECA SEPs in Muni Cases Fact Sheet.9.10.19.docx

attached

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

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**From:** Makepeace, Caroline  
**Sent:** Tuesday, September 10, 2019 11:14 AM  
**To:** Koslow, Karin <Koslow.Karin@epa.gov>  
**Cc:** Porter, Amy <Porter.Amy@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** Re: Wheeler Fact Sheet on SEPs

I was just doing that, multitasking during a call with DOJ legislative folks! I have to talk in a minute, but will get it to you shortly.

Sent from my iPhone

On Sep 10, 2019, at 11:12 AM, Koslow, Karin <[Koslow.Karin@epa.gov](mailto:Koslow.Karin@epa.gov)> wrote:

All – just to close the loop – can you please finalize this and we'll get it to the IO ASAP.

Thanks!  
Karin

Karin Koslow  
Deputy Director, Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Desk: (202) 564-0171  
Cell: (202) 716-5645  
WJC South Room 3142D

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**From:** Kelley, Rosemarie <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)>  
**Sent:** Monday, September 09, 2019 6:51 PM  
**To:** Makepeace, Caroline <[Makepeace.Caroline@epa.gov](mailto:Makepeace.Caroline@epa.gov)>; Koslow, Karin <[Koslow.Karin@epa.gov](mailto:Koslow.Karin@epa.gov)>;

Porter, Amy <Porter.Amy@epa.gov>  
Cc: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
Subject: RE: Wheeler Fact Sheet on SEPs

Caroline –

Thanks for drafting this (and on short notice)! I really appreciate it.

Karin and I have reviewed and our comments are attached. Please let us know if any of the changes raise concerns. Thanks.

Rosemarie

---

**From:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Sent:** Monday, September 09, 2019 12:52 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>  
**Cc:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** Wheeler Fact Sheet on SEPs

Please see attached draft. John has already reviewed and made helpful comments (Thx!)

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

## **SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEPs) IN CASES INVOLVING STATE AND LOCAL GOVERNMENTS**

### **BACKGROUND:**

- Under EPA's long-standing **Supplemental Environmental Projects (SEP) Policy**<sup>1</sup>, in determining the appropriate final penalty amount to accept in settlement, EPA may consider a project that a defendant voluntarily offers to undertake. The project must have a nexus to the environmental requirement that the defendant violated and must not be otherwise required by law.
- SEPs are projects that a defendant volunteers to undertake in settlement that provide additional environmental benefits by reducing human health exposures or environmental impacts or by reducing the likelihood of future violations.
- Examples of SEPs include lead-based paint abatement for low-income housing in the vicinity of a facility with Clean Air Act violations involving lead emissions; purchase of emergency response equipment for the community in which a defendant has violated the Clean Air Act risk management program; and emissions or discharge reductions at a defendant's facility beyond that which is required by law.

### **TALKING POINTS:**

- EPA's SEP Policy is unchanged and still in effect, and the Agency continues to support the inclusion of SEPs that meet all the requirements of the Policy in appropriate cases.
- EPA continues to include SEPs in administrative settlements, including those with governmental entities.
- EPA supports SEPs not only because of their additional positive environmental benefits, but also because they are useful in achieving settlements.
- Many defendants prefer a lower civil penalty and the goodwill generated with the community through the performance of SEPs, even if their total expenditure is greater than it would have been had they only paid a civil penalty. State or local governments often request to include SEPs in settlement because local officials and the communities they represent consider the projects to be positive elements in the resolution of violations.
- In August 2019, DOJ's Enforcement and Natural Resources Division issued a memorandum expressly disallowing the inclusion of SEPs in cases against governmental entities, with extremely limited potential exceptions.
- The August 2019 memo relied on a memo issued by the Attorney General in November 2018, which directed that settlements with state and local governments could not include terms that go beyond what is necessary to ensure compliance. ENRD interprets that memo to preclude SEPs because they are voluntary and cannot be obtained "by litigating the matter to judgment."

---

<sup>1</sup> EPA's SEP Final Policy was issued over 20 years ago, in 1998, and was updated in 2015.

Message

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**From:** Porter, Amy [Porter.Amy@epa.gov]  
**Sent:** 5/1/2019 2:45:43 PM  
**To:** Koslow, Karin [Koslow.Karin@epa.gov]  
**Subject:** RE: Recent DOJ memos relevant to SEPs/mitigation

Thanks. We are doing work on our intranet and internet pages right now where OECA docs are so we might want to think about what would go on a One Drive without duplicating efforts.

For now, our public page for policies is: <https://www.epa.gov/enforcement/enforcement-policy-guidance-publications>

---

**From:** Koslow, Karin  
**Sent:** Wednesday, May 01, 2019 10:40 AM  
**To:** Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** RE: Recent DOJ memos relevant to SEPs/mitigation

This is great – thank you! I was thinking about asking Catherine to start a hardcopy notebook for me with key memos. I can copy you on that email.

We could also create a One Drive with these memos.... I'm happy to set up the infrastructure for it. It would be super basic to start and then we could refine as more memos are added?

Let me know what you think – thanks,  
Karin

Karin Koslow  
Deputy Director, Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
(202) 564-0171  
WJC South Room 3142D

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**From:** Porter, Amy  
**Sent:** Wednesday, May 01, 2019 10:07 AM  
**To:** Koslow, Karin <[Koslow.Karin@epa.gov](mailto:Koslow.Karin@epa.gov)>  
**Cc:** Kelley, Rosemarie <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)>  
**Subject:** FW: Recent DOJ memos relevant to SEPs/mitigation

Karin –

As discussed. More to come during the XPS general meetings.

Amy

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**From:** Makepeace, Caroline  
**Sent:** Wednesday, May 01, 2019 10:04 AM

**To:** Porter, Amy <Porter.Amy@epa.gov>

**Subject:** Recent DOJ memos relevant to SEPs/mitigation

Attached are some recent DOJ memos and guidance relevant to our SEP and mitigation practice: AG memo re third party payments; ENRD guidance on that memo; State and local government (aka "Muni") memo.

# Ex. 5 AC/DP

Caroline Makepeace  
Senior Counsel  
Crosscutting Policy Staff  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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Message

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**From:** Porter, Amy [Porter.Amy@epa.gov]  
**Sent:** 6/6/2019 6:01:47 PM  
**To:** Koslow, Karin [Koslow.Karin@epa.gov]  
**Subject:** FW: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs

OMG you are right!!!! I feel awful!

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**From:** Kelley, Rosemarie  
**Sent:** Wednesday, June 05, 2019 9:56 AM  
**To:** Porter, Amy <Porter.Amy@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** RE: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs

**Ex. 5 AC/DP**

Rosemarie

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**From:** Porter, Amy  
**Sent:** Wednesday, June 05, 2019 9:53 AM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** FW: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs  
**Importance:** High

Caroline is accepting Larry's comments and will send a clean version to Rosemarie to send up.

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**From:** Starfield, Lawrence  
**Sent:** Wednesday, June 05, 2019 9:09 AM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Cc:** Koslow, Karin <Koslow.Karin@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>  
**Subject:** RE: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs  
**Importance:** High

This looks good. I had a few suggestions, below. Please consider them, and then send a revised version to both Susan and me so that we can issue this today. Thanks.

Larry

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**From:** Kelley, Rosemarie  
**Sent:** Tuesday, June 04, 2019 7:03 PM  
**To:** Starfield, Lawrence <Starfield.Lawrence@epa.gov>  
**Cc:** Koslow, Karin <Koslow.Karin@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Makepeace, Caroline



<Makepeace.Caroline@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Buterbaugh, Kristin  
<Buterbaugh.Kristin@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>

**Subject:** Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs

Larry—Here is our proposed note from Susan to Claire. We look forward to your feedback.

\*\*\*\*\*

**Ex. 5 AC/DP**

# Ex. 5 AC/DP

Please let me know if I can provide any further information.

Susan

Regards,  
Rosemarie A. Kelley, Director  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
202-564-4014

Message

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**From:** Makepeace, Caroline [Makepeace.Caroline@epa.gov]  
**Sent:** 7/29/2019 5:41:22 PM  
**To:** Koslow, Karin [Koslow.Karin@epa.gov]; Porter, Amy [Porter.Amy@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]  
**CC:** Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]  
**Subject:** RE: Rosemarie's notes on [REDACTED] Ex. 7(A)

Thanks!

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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**From:** Koslow, Karin  
**Sent:** Monday, July 29, 2019 1:00 PM  
**To:** Porter, Amy <Porter.Amy@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Cc:** Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>  
**Subject:** Rosemarie's notes on [REDACTED] Ex. 7(A)

Here are notes Rosemarie shared re: the muni SEPs in play, based on her discussions with RCs. This is relevant to our discussion tomorrow with Larry during our weekly about scheduling a discussion w/certain Regions about a national strategy for managing these.

Thanks,  
Karin

Karin Koslow  
Deputy Director, Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Desk: (202) 564-0171  
Cell: (202) 716-5645  
WJC South Room 3142D

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**From:** Kelley, Rosemarie  
**Sent:** Friday, July 26, 2019 6:04 PM  
**To:** Koslow, Karin <Koslow.Karin@epa.gov>  
**Cc:** Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>  
**Subject:** my notes on [REDACTED] Ex. 7(A)

# **Ex. 5 AC/DP**

Rosemarie Kelley, Director

Office of Civil Enforcement

OECA